

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

PREAMBLE

1. Sections Affected Rulemaking Action
R4-21-103 Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 32-1704(A)
Implementing statute: A.R.S. §§ 32-1727, 32-1773, 39-121.01, and 39-121.03
3. The effective date of the rules:
September 14, 1998
4. A list of all previous notices appearing in the Register, addressing the final rule:
Notice of Docket Opening: 4 A.A.R. 331, January 30, 1998
Notice of Proposed Rulemaking: 4 A.A.R. 492, February 20, 1998
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Ms. Alexis Kjellstrom
Address: 1400 West Washington, Room 230
Phoenix, Arizona 85007
Telephone: (602) 542-3095
Facsimile: (602) 542-3093
6. An explanation of the rule, including the agency's reasons for initiating the rule:
A.R.S. § 32-1774 prohibits nonresident dispensers from filling a prescription for replacement soft contact lenses without having registered with the Board of Optometry and paid the required registration fee. A.R.S. § 32-1773(B) requires the Board to set a fee for nonresident dispenser registration and registration renewal. A.A.C. R4-21-103 is being amended to add a new subsection that establishes the fees to register and renew registration as a nonresident dispenser.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business and consumer impact:
The Board of Optometry will incur only minimal expenses in implementing the new nonresident dispenser law. Besides the cost of the consultant assisting the Board with these rules, expenses will be incurred in the biennial registering of nonresident dispensers and in notifying nonresident dispensers who fill prescriptions for replacement soft contact lenses of the new registration requirement. Costs to individual nonresident dispensers who register will be \$500 every 2 years. At present 40 to 50 have been identified. There should be no other cost impacts.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Form changes were made to the rules in response to comments provided by the Office of the Secretary of State following the filing of the Notice of Proposed Rulemaking as well as 1 clarification. In response to GRRC staff review comments, additional rewordings were made to existing rule language as well as form changes and the shortening of the newly adopted rule subsection to eliminate redundancy. The changes include a correction to the name of the Title in which the rules are found by deleting the word "Commerce", the deletion of decimal points and zeroes to the right of the decimals in monetary amounts, and the addition of "biennial" before "renewal" in the new subsection to clarify that renewal of registration for a nonresident dispenser is

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every 2 years. In addition, the new subsection (D) was revised to remove the phrase "for the purpose of filling prescriptions for replacement soft contact lenses" because that is part of the definition of "nonresident dispenser".

10. A summary of the principal comments and the agency response to them:
No comments were received.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
None.
13. Was this rule previously adopted as an emergency rule?
Not applicable.
14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-21-103. Fees

ARTICLE 1. GENERAL PROVISIONS

R4-21-103. Fees

- A. In addition to fees established by A.R.S. § 32-1727, the the Board shall charge license fees as follows fees relating to licenses are:
 1. License issuance fee: \$150.00 in even-numbered years and \$300.00 in odd-numbered years.
 2. Biennial license renewal fee: \$300.00.
- B. A person requesting public records shall pay The Board will charge the following fees for searches and copies of Board its

records under made pursuant to A.R.S. §§ 39-121.01 or 39-121.03:

1. Noncommercial copy:
 - a. 5¢ per name and address for directory listings or 15¢ each if printed on labels,
 - b. 25¢ per page for other records;
2. Commercial copy:
 - a. 25¢ per name and address for directory listings or 35¢ each if printed on labels,
 - b. 50¢ per page for other records;
3. Record searches: \$25.00 per hour, after 1st first 15 minutes.
- C. Pamphlets containing optometry statutes and rules: \$5.00.
- D. An applicant for registration or biennial registration renewal as a nonresident dispenser shall pay to the Board a fee in the amount of \$500.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

PREAMBLE

1. Sections Affected

R4-46-101
R4-46-103
R4-46-104
R4-46-106
R4-46-201
R4-46-202
R4-46-203
R4-46-203
R4-46-204
R4-46-204
R4-46-205
R4-46-205
R4-46-206
R4-46-206
R4-46-207
R4-46-207
R4-46-208
R4-46-208
R4-46-209
R4-46-209

Rulemaking Action

Amend
Amend
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New Section
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Amend
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Amend
Renum
New Section
Renum
Amend

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R4-46-210	Renumber
R4-46-210	Amend
R4-46-301	Amend
R4-46-302	Repeal
R4-46-302	Renumber
R4-46-302	Amend
R4-46-303	Renumber
R4-46-303	Amend
R4-46-304	Renumber
R4-46-304	New Section
R4-46-305	Repeal
R4-46-305	Renumber
R4-46-305	Amend
R4-46-306	Renumber
R4-46-401	Amend
Article 5	Amend
R4-46-501	Amend
R4-46-502	Amend
R4-46-503	Amend
Article 6	Repeal
Article 6	New Article
R4-46-601	Repeal
R4-46-601	New Section
R4-46-602	New Section

2. **The specific authority for the rulemaking, including the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-3605

Implementing statutes: A.R.S. §§ 32-3601, 32-3604, 32-3605, 32-3606, 32-3607, 32-3619(E), 32-3620, 32-3621, 32-3625(D), 32-3625(G), 32-3655

3. **The effective date of the rules:**

October 1, 1998

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 2976, October 24, 1997

Notice of Proposed Rulemaking: 4 A.A.R. 392, February 13, 1998

Notice of Public Information: 4 A.A.R. 563, February 20, 1998

5. **The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name: Shirley L. Berry

Address: Board of Appraisal
1400 West Washington, Suite 360
Phoenix, Arizona 85007

Telephone: (602) 542-1539

Fax: (602) 542-1598

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

All rules are written to comply with the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and state statutes applicable to real estate appraisers and property tax agents. Changes in existing rules are planned to help clarify and give meaning to the rules.

R4-46-101 - Definitions - provides definitions of terms used in the subsequent sections.

R4-46-103 - Board Records; Public Access; Copying Fees - prescribes the manner in which the Board shall maintain and make records available.

R4-46-104 - Confidential Records - governs the confidentiality of records balancing the privacy rights of persons with the public's right to access records.

R4-46-106 - Fees - specifies the amount of each fee the Board may collect.

R4-46-201 - Appraiser Qualification Criteria - sets the requirements for qualification as an Arizona licensed/certified appraiser.

R4-46-202 - Application for License or Certificate - requires an application, test, and fees for license or certificate eligibility.

R4-46-203 - Procedures for Processing Applications - sets procedures and establishes time frames for the application process.

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R4-46-204 - Appraiser Examinations - sets exam requirements for scheduling, excused absence, forfeiture, subject matter, and reexamination.

R4-46-205 - Issuance of a License or Certificate - provides criteria for issuance of license or certificate.

R4-46-206 - Hearing on Denial of a License or Certificate - provides due process to a licensee or certificate holder after denial of license or certificate.

R4-46-207 - Renewal of a License or Certificate - sets forth requirements for renewal of a license or certificate.

R4-46-208 - Renewal of an Expired License or Certificate - provides for renewal of an expired license or certificate within the given time period.

R4-46-209 - Replacement License or Certificate - provides a procedure for replacing a license or certificate.

R4-46-210 - Change of Address - sets the time period for notifying the Board about a change of address.

R4-46-301 - Investigations, Informal Proceedings, and Summary Suspensions - requires investigation of violations by the Board and governs actions taken as a result of investigation.

R4-46-302 - Formal Hearing Procedures - sets procedures for providing notice, using a hearing officer, conducting the hearing, and making and maintaining a record of the hearing, and establishes consequences for failure to appear.

R4-46-303 - Rehearing or Review of the Board's Decision - provides for rehearing of the Board's decision, including time frames and required procedures.

R4-46-304 - Conviction and Judgement Disclosure - requires Parties to disclose convictions of acts that would relate to their duties.

R4-46-305 - Terms and Conditions of Reapplication - provides a procedure for reinstatement and sets a criterion for determination and limitation of the right of reinstatement.

R4-46-401 - Standards of Appraisal Practice - incorporates standards governing appraisers. This rule was changed from the proposed text to include the latest publication of the Uniform Standards of Professional Appraisal Practice.

R4-46-501 - Course Approval - provides for Board approval of prerequisite and continuing education courses and sets requirements and criteria for course provider approval.

R4-46-502 - Course Equivalency Approval - allows an applicant to obtain course approval by demonstrating equivalency to previously approved courses.

R4-46-503 - Hearing on Denial of Course Approval - allows for a hearing if the Board denies course approval.

R4-46-601 - Standards of Practice - sets standards for disciplining Property Tax Agents.

R4-42-602 - Disciplinary Proceedings; Board Action; Notice of Requirements - establishes the procedures which the Board will use to process hearings and disciplinary matters involving Property Tax Agents.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not Applicable.

8. **The summary of the economic, small business, and consumer impact:**

Groups that would be affected primarily would be the Board of Appraisal, the licensed or certified appraisers, the public, and other agencies. Consideration was given to the cost of Board enforced compliance, including possible court costs. Cost of fees to the appraisers and property tax agents, possible litigation fees, education fees were considered, and loss of income. Cost or revenue to the course providers was considered. Public's right to access records and cost associated were considered. Impact of possible losses to the public were considered. A reduction in initial and renewal application fees has been included as has been a reduction in the fee for review of a course previously approved. The majority of the rules have been in effect since the Board was established and there should be no appreciable change in the economic impact.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**

A notice of Public Information on Proposed Rules was published changing the oral proceeding date. Changes as a result of the oral proceedings and suggested changes from the Secretary of State and GRRC's review were included in the original rule package. At the request of GRRC after the rule package was tabled, the Board's representatives met individually with each of the public commentators. In addition the Board met with all interested Parties at an open meeting. The changes adopted are contained in this package which supplements our original package. A complete description of the changes are contained in the Concise Explanatory Statement.

10. **A summary of the principal comments and the agency response to them:**

The primary comments were concerning the fee structure and modifications to the disciplinary process. The Board made changes to the fee structure to reduce initial licensing and certification fees and to reduce the renewal fees as well as to reduce the fees for review of a course previously approved. The Board made modifications to the disciplinary process to add clarity to the procedure.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

Appraiser Qualification Criteria, established by the Appraisal Foundation, dated February 16, 1994. The location in the rules is R4-46-201(A).

National Uniform Examination Content Outline, dated November 4, 1993, published by the Appraisal Foundation. The location in the rules is R4-46-204(D).

Uniform Standards of Professional Appraisal Practice, 1998 Edition published by the Appraisal Foundation. The location in the rules is R4-46-401.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-46-101. Definitions
- R4-46-103. Board Records; Public Access; Copy Fees
- R4-46-104. Confidential Records
- R4-46-106. Fees

ARTICLE 2. LICENSING AND CERTIFICATION

- R4-46-201. Appraiser Qualification Criteria
- R4-46-202. Application for Original License or Certificate
- R4-46-203. Procedures for Processing Applications
- R4-46-204. R4-46-203 Appraiser Examinations
- R4-46-205. R4-46-204 Issuance of a License or Certificate
- R4-46-206. R4-46-205 Hearing on Denial of a License Licenseure or Certificate Certification
- R4-46-207. R4-46-206 Renewal of a License or Certificate
- R4-46-208. Renewal of an Expired License or Certificate
- R4-46-209. R4-46-207 Replacement License or Certificate
- R4-46-210. R4-46-208 Change of Address

ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS

- R4-46-301. Investigations; Informal Proceedings; Summary Suspensions; Disciplinary Proceedings; Board Action; Notice Requirements
- R4-46-302. R4-46-303. Formal Hearing Procedures
- R4-46-303. R4-46-304. Rehearing or Review of the Board's Decisions
- R4-46-304. R4-46-305. Conviction and Judgement Disclosure Duty to Disclose and/or Entry of Civil Judgement
- R4-46-305. R4-46-306. Terms and Conditions of Reapplication After Revocation

ARTICLE 4. STANDARDS OF PRACTICE

- R4-46-401. Standards of Appraisal Practice

ARTICLE 5. PREREQUISITE EDUCATION COURSE APPROVAL

- R4-46-501. Prerequisite Education Course Approval
- R4-46-502. Prerequisite Education Course Equivalency Approval
- R4-46-503. Hearing on Denial of Prerequisite Education Course Approval

ARTICLE 6. CONTINUING EDUCATION

- R4-46-601. Continuing Education Course Approval

ARTICLE 6. PROPERTY TAX AGENTS

- R4-46-601. Standards of Practice
- R4-46-602. Disciplinary Proceedings; Board Action; Notice Requirements

ARTICLE 1. GENERAL PROVISIONS

R4-46-101. Definitions

In these rules, unless the context otherwise requires:

1. "Arizona or State Certified General Appraiser" means the State Certified General Real Estate Appraiser classification Classification set forth in A.R.S. § 32-3612(A)(1) and corresponds to the Certified General Real Property Appraiser classification Classification of the Appraisal Foundation.
2. "Arizona or State Certified Residential Appraiser" means the State Certified Residential Real Estate Appraiser classification Classification set forth in A.R.S. § 32-3612(A)(2) and corresponds to the Certified Residential Real Property Appraiser classification Classification of the Appraisal Foundation.
3. "Arizona or State Licensed Appraiser" means the State Licensed Real Estate Appraiser classification Classification set forth in A.R.S. § 32-3612(A)(3) and corresponds to the Licensed Real Property Appraiser classification Classification of the Appraisal Foundation.
4. "Appraisal Foundation" means the educational organization, as defined in by A.R.S. § 32-3601(3), which is the parent organization of the Appraiser Qualifications Board and the Appraisal Standards Board. The Appraisal Foundation is located at 1029 Vermont Ave., N.W. Ste. 900, Washington, DC 20005.
5. "Appraisal Standards Board" means the Board of the Appraisal Foundation organized to promote the implementation of the Uniform Standards of Professional Appraisal Practice ("USPAP").
6. "Appraiser" means an Arizona Licensed Appraiser, an Arizona Certified Residential Appraiser, or an Arizona Certified General Appraiser.
7. "Appraiser Qualifications Board" means the board of the Appraisal Foundation organized to establish qualification criteria for state-licensed and certified appraisers.

8. "Board" means the Arizona Board of Appraisal established by A.R.S. § 32-3604. For the purposes of Article 3, the term "Board" includes any administrative law judge used or contracted for by the Board.
9. ~~"Continuing education" means the continuing course work set forth in the Appraiser Qualifications Board, Appraiser Qualification Criteria for Residential and General Classifications of Real Property Appraisers, Section I(A)(4)(a)(1), (2), and (4) of the Licensed Real Property Appraiser Classification, Appraiser Qualification Criteria; Section II(A)(4)(a)(1), (2), and (4) of the Certified Residential Real Property Appraiser Classification, Appraiser Qualification Criteria and Section III(A)(4)(a)(1), (2), and (4) of the Certified General Real Property Appraiser Classification, Appraiser Qualification Criteria dated February 9, 1993, not including any subsequent amendments, restatements, revisions, and/or replacement criteria, published by the Appraisal Foundation which the Board incorporates by reference. Copies are on file with the Secretary of State. Copies may be obtained from the Board or the Appraisal Foundation.~~
10. "Course Provider" "Provider" means any organization or individual offering prerequisite or continuing education courses.
"Formal Complaint" means notice of allegations issued by the Board pursuant to R4-46-302.
10. "Party" means each person or agency named or admitted as a party or properly seeking and entitled to participate in any proceeding before the Board.
11. ~~"Prerequisite education" means the qualifying course work set forth in the Appraiser Qualifications Board, Appraiser Qualification Criteria for Residential and General Classifications of Real Property Appraisers, Section I(A)(2)(a)(1), (2), and (4) (7) of Licensed Real Property Appraiser Classification, Appraiser Qualification Criteria; Section II(A)(2)(a)(1), (2), and (4) (7) of Certified Residential Real Property Appraiser Classification, Appraiser Qualification Criteria; and Section III(A)(2)(a)(1), (2), (4) (7) of Certified General Real Property Appraiser Classification Appraiser Qualification Criteria, published by the Appraisal Foundation dated February 9, 1993, not including any subsequent amendments, restatements, revisions, and/or replacement criteria. Copies are on file with the Secretary of State. Copies may be obtained from the Board or the Appraisal Foundation.~~
12. ~~Provider means any organization or individual offering prerequisite or continuing education courses.~~
"Respondent" means Appraiser, Course Provider, Property Tax Agent, or any other party responding to a motion or a proceeding before the Board.
13. "Rules" means the Arizona Board of Appraisal Rules requirements set forth in the Arizona Administrative Code, Title 4, Chapter 46, Arizona Board of Appraisal rules.
"USPAP" means the Uniform Standards of Professional Appraisal Practice.

R4-46-103. Board Records; Public Access; Copying Fees

- A. The Board shall ~~keep maintain~~ all records reasonably necessary or appropriate to maintain an accurate knowledge of its official activities including, but not limited to: applications for ~~an a~~ initial license or certificate; renewal; applications; or examination results; documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a license or certificate; investigative reports; staff

memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.

- B.** ~~A person shall not remove~~ No Board records shall be removed from the office of the Board unless the records they are in the custody and control of a Board member, a member of the Board's staff, or the Board's attorney. The Executive Director may designate a staff member to observe and monitor any examination of Board records.
- C.** The Board shall provide copies ~~Copies~~ of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.

R4-46-104. Confidential Records

Except as otherwise provided by law, the Board shall not disclose:

1. ~~1. A Except as provided in subsection (C), the Questions~~ questions contained in any examination administered by or for the Board or in any examination submitted to the Board for course approval shall not be made available for public inspection at any time;
2. ~~B Questions asked and The the~~ answers of individual examinees shall not be made available for public inspection or copying. However, the Board shall provide the The grades of each examinee shall be made available for public inspection and copying on and after the date set by the Board for the release of examination results;
- ~~C. Notwithstanding the foregoing, upon receipt of a written request within 30 days of a notice of a test result by an individual who failed the examination, the Board will make arrangements to allow the individual to review the questions and answers of the examination, provided however, that the applicant will not be allowed to copy the questions or answers.~~
3. ~~D. Minutes of the Board's executive sessions of the board shall not be made available for public inspection or copying; and~~
4. Appraisal reports or appraisal reviews and supporting documentation deemed confidential under USPAP and adopted by the Board.

R4-46-106. Fees

- A.** Except as provided in subsections (D) and (E), the The Board shall charge and collect fees for the following fees:

- | | |
|--|----------|
| 1. Initial Application and First Biennial License | \$400 |
| Arizona Licensed Appraiser | \$400 |
| Arizona Certified Residential Appraiser | \$400 |
| Arizona Certified General Appraiser | \$400 |
| 2. Examination Fee | \$100 |
| 3. Reexamination Fee | \$100 |
| 4. Biennial Renewal of a License or Certificate | \$425 |
| 5. Delinquent Renewal Fee (in addition to the Renewal fee) | \$25 |
| 6. Biennial Federal Registry Fee | \$50 |
| 7. Nonresident Temporary License or Certificate | \$150 |
| 8. Duplicate License or Certificate | \$5 |
| 9. <u>Fee for Prerequisite Education Courses: Course Review:</u> | |
| a. <u>Qualifying Education</u> | |
| i. Initial Review and Approval | \$300 |
| ii. <u>Fee for Review of Course Previously Approved</u> | \$50 \$5 |
| b. <u>Continuing Education</u> | |
| 10. Administrative Fee for Continuing Education Course Review | |
| i. Initial Review and Approval of: | |
| 2-hour courses | \$50 |
| 3-and 4-hour courses | \$100 |
| Any course 5 hours or longer | \$150 |

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- ii. Fee for Review of Course Previously Approved \$50 \$5
- B. A person Payment of fees shall pay fees be made by cash, certified check, cashier's check, or money order payable to the Arizona Board of Appraisal.
- C. A person making a public record request shall pay the Board the reasonable cost of reproduction consistent with A.R.S. Title 39, Chapter 1, Article 2. The person shall pay for the Board's cost of reproduction by cash, certified check, cashier's check, or money order.
- D. The fee for an initial application filed after November 30, 1998 and before December 1, 2000 shall be \$300.00
- E. The renewal application fee for a license or certificate expiring after November 30, 1998 and before December 1, 2000 shall be \$225.00.

ARTICLE 2. LICENSING AND CERTIFICATION

R4-46-201. Appraiser Qualification Criteria

- A. Except as provided in subsections (B) and (C), an applicant for the applicable classification of license or certificate should meet that classification's Appraiser Qualification Criteria, established by the Appraisal Foundation and dated February 16, 1994, which are incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference includes no future additions or amendments. A copy of the Appraiser Qualification Criteria may be obtained from the Board or the Appraisal Foundation. Persons desiring to obtain licensure or certification as a state-certified or licensed appraiser shall, in addition to satisfying the criteria set forth in subsections (B), (C), or (D), complete 2 hours of study of A.R.S. Title 32, Chapter 36 and these rules.
- B. The incorporation by reference in subsection (A) does not govern an Appraiser's scope of practice. The scope of practice for each classification of license or certificate is set forth in A.R.S. § 32-3612(A). The incorporation by reference in subsection (A) does not govern the minimum amount of experience, measured in hours or years, necessary for certification. The minimum experience required for certification is set forth in A.R.S. § 32-3615(A). Arizona Licensed Real Estate Appraiser. The scope of practice for an Arizona Licensed Real Estate Appraiser is set forth in A.R.S. § 32-3612(A)(3). The Board adopts as its requirements for qualifications as an Arizona Licensed Real Estate Appraiser and incorporates by reference the minimum criteria as set forth in Appraiser Qualifications Board Appraiser Qualification Criteria for Residential and General Classifications of Real Property Appraisers—Licensed Real Property Appraiser Classification, Appraiser Qualification Criteria, dated February 9, 1993, published by the Appraisal foundation and which are on file with the Secretary of State. The Board does not incorporate the scope of practice set forth in section I of the provisions of sections A(2)(a)(3) and A(4)(a)(3) or any subsequent amendments, restatements, revisions, and/or replacement criteria. Copies may be obtained from the Board or Appraisal Foundation.
- C. An applicant for any classification of a license or certificate shall complete at least 2 hours of course work covering A.R.S. Title 32, Chapter 36 and these rules. Arizona Certified Residential Real Estate Appraiser: The scope of practice for an Arizona Certified Residential Real Estate Appraiser is set forth in A.R.S. § 32-3612(A)(2). The experience qualifications for an Arizona Certified Residential Real Estate Appraiser are set forth in A.R.S. § 32-3615(A)(1) and (2). In addition, the Board incorporates by reference the minimum

criteria for a Certified Residential Real Property Appraiser Classification, as set forth in the Appraiser Qualifications Board Appraiser Qualification Criteria for Residential and General Classifications of Real Property Appraiser—Certified Residential Real Property Appraiser Qualification, Appraiser Qualification Criteria, adopted February 9, 1993, published by the Appraisal Foundation and which are on file with the Secretary of State. The Board does not incorporate the scope of practice set forth in section II or sections A(2)(a)(3) and A(4)(a)(3) or any subsequent amendments, restatements, revisions, and/or replacement criteria of the minimum criteria described above. Although the Board does not incorporate the 2-year experience criterion set forth in section 3 of minimum criteria, the Board does not incorporate the methods of computing the criteria set forth in section 3(a), (b), and (e).

D. Regardless of whether a transaction is federally related:

1. A State Licensed Residential Appraiser is limited to transactions involving 1 to 4 family residential real property having a value of less than 1 million dollars and not involving complex 1 to 4 family residential real property.
2. A State Certified Residential Appraiser is limited to the scope of practice set forth in A.R.S. § 32-3612(A)(2). Arizona Certified General Real Estate Appraiser: The scope of practice for an Arizona Certified General Real Estate Appraiser is set forth in A.R.S. § 32-3612(A)(1). The experience qualifications for an Arizona Certified General Real Estate Appraiser are set forth in A.R.S. § 32-3615(A)(1) and (2). In addition, the Board incorporates by reference the minimum criteria for a Certified General Real Estate Appraiser Classification, as set forth in the Appraiser Qualifications Board Appraiser Qualification Criteria for Residential and General Classification of Real Property Appraiser, Certified General Real Property Appraiser Classification—Appraiser Qualification Criteria, dated February 9, 1993, published by the Appraisal Foundation and which are on file with the Secretary of State. The Board does not incorporate the scope of practice set forth in section III or sections A(2)(a)(3) and A(4)(a)(3) or any subsequent amendments, restatements, revisions, and/or replacement criteria of the minimum criteria described above. Although the Board does not incorporate the 2-year experience criterion set forth in section 3 of the minimum criteria, the Board does incorporate the methods of computing the criteria set forth in Section 3(a), (b), and (e).

R4-46-202. Application for Original License or Certificate

- A. An applicant for a state certificate or license shall submit a completed application accompanied by the appropriate initial application fee. Once the application has been filed, no fees are non-refundable, will be refunded to the applicant.
- B. To be eligible for a license or certificate, an applicant shall: If the test provider does not allow for test on demand, the Board will require applications to be filed at least 45 days prior to examination date.
 1. Meet the qualification criteria contained in A.R.S. Title 32, Chapter 36, Article 2 and these rules;
 2. Achieve a passing score on the applicable examination required by R4-46-204(D), unless exempted under A.R.S. § 32-3626;
 3. Pay all required application and examination fees;
 4. Pay the biennial federal registry fee; and
 5. Comply with the requirements of A.R.S. § 32-3611.

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- C. An applicant shall meet all requirements for a license or certificate within 1 year of filing the application or the applicant's file will be closed and the applicant shall reapply, meeting the requirements of R4-46-202(B). The Board shall notify an applicant whose application has been closed by certified mail or personal service at the applicant's last known address of record. Notice is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of Civil Procedure.

R4-46-203. Procedures for Processing Applications

- A. To comply with A.R.S. Title 41, Chapter 6, Article 7.1, the Board establishes the following time-frames for all licenses and certificates:
1. The Board shall notify the applicant within 45 days of receipt of the application that it is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
 2. The Board shall not substantively review an application until the applicant has fully complied with the requirements of R4-46-202. The Board shall render a final decision not later than 45 days after the applicant successfully completes all requirements of R4-46-202.
 3. Although the applicant may have up to 1 year to comply with requirements of R4-46-202, the overall time-frame for Board action is 90 days, 45 days for administrative completeness review and 45 days for substantive review.
- B. If the Board denies a license, the Board shall send the applicant written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a hearing to challenge the denial; and
 3. The time periods for appealing the denial.

R4-46-204. ~~R4-46-203.~~ Appraiser Examinations

- A. The Board shall not schedule an applicant for Time and Place. Applicants will not be scheduled for an examination until the applicant has they have completed all of the prerequisite education requirements requirement
- B. If the test provider does not allow for a test on demand, an applicant shall file an application to take an examination at least 45 days prior to the examination date.
- C. ~~B.~~ Rescheduling; excused absence; forfeiture
1. Except as provided in subsections (2) and (3), ~~(B)(2)~~, the Board shall not provide an applicant who has been scheduled for an a particular examination date with will not be rescheduled for a later examination date unless the applicant files a new application and pays a reexamination fee, without filing another application and fees, unless a request to be rescheduled is made at least 15 days in advance of the applicant's originally scheduled examination date.
 2. The Board An applicant may grant be granted an excused absence from a scheduled examination if the applicant provides evidence satisfactory to the Board that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. An applicant shall promptly make a request for an excused absence must be made promptly in writing and support the request with must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the examination date will be denied unless the applicant was unable

to file a timely request due to the same circumstances that prevented the applicant from taking the examination.

3. An applicant may request that the applicants examination date be rescheduled if the request is made at least 15 days before the originally scheduled examination date.

~~D.C.~~ Subject Matter

Each applicant shall take an examination for the applicable classification of license or certificate that covers the subject matter set forth in the National Uniform Examination Content Outline, dated November 4, 1993, which is incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the outline may be obtained from the Board or the Appraisal Foundation.

1. The examination for licensure as an Arizona Licensed Appraiser shall test applicants on the general subject areas set forth in the Appraiser Qualifications Board National Uniform Examination Content Outline for Licensed, Certified Residential, and Certified General Real Property Appraiser Classifications, National Uniform Examination Content Outline Licensed Real Property Appraiser Classification dated November 4, 1993, published by the Appraisal Foundation, which is incorporated by reference, not including later amendments, and is on file with the Secretary of State. Copies of the content outline may be obtained from the Board or the Appraisal Foundation.
2. The examination for licensure as an Arizona Certified Residential Appraiser shall test applicants on the general subject areas set forth in the Appraiser Qualifications Board National Uniform Examination Content Outlines for Licensed, Certified Residential, and Certified General Real Property Appraiser Classifications, National Uniform Examination Content Outline Certified Residential Real Property Appraiser Classification, dated November 4, 1993, published by the Appraisal Foundation, which is incorporated by reference, not including later amendments, and is on file with the Secretary of State. Copies of the content outline may be obtained from the Board or the Appraisal Foundation.
3. The examination for certification as an Arizona Certified General Appraiser shall test applicants on the general subject areas set forth in the Appraiser Qualifications Board National Uniform Examination Content Outlines for Licensed, Certified Residential, and Certified General Real Property Appraiser Classifications, National Uniform Examination Content Outline Certified General Real Property Appraiser Classification, dated November 4, 1993, published by the Appraisal Foundation, which is incorporated by reference, not including any subsequent amendments, restatements, revisions, and/or replacement content outlines, and which is on file with the Secretary of State. Copies of the content outline may be obtained from the Board or the Appraisal Foundation.

~~E.D.~~ Reexamination

1. An applicant for a license licensure or certificate certification who fails to pass an examination or fails to appear for a scheduled an examination for which the applicant has been scheduled may schedule another examination by filing a new upon-written application and paying to the Board on a prescribed form accompanied by the reexamination fee.

2. Any individual who fails the examination 5 times and wishes to retake the examination must reapply to the Board after receiving the test results from the test provider and retake qualifying education in the areas failed and present evidence of successfully completing the classes.

R4-46-205, R4-46-204. Issuance of a License or Certificate

An applicant who has met the appraiser qualification criteria prescribed in R4-46-202(B), achieved a passing score on the applicable examination, and paid the application and biennial federal registry fees shall be issued a license or certificate which entitles the applicant to practice as an Appraiser for the term of the license or certificate.

If, within 12 months of filing an application, an applicant meets the minimum qualification criteria for licensure or certification and achieves a passing score on the examination, the applicant shall pay the biennial federal registry fee and will be issued a license or certificate. The license or certificate shall entitle the applicant to practice as an Arizona Licensed Appraiser, Arizona Certified Residential Appraiser, or Arizona Certified General Appraiser for the duration of the license or certificate. A Certified Residential Appraiser may not use the designation "Certified Appraiser" without clearly indicating that the certification is limited to residential property. The use of the full title "Certified Residential Appraiser" will satisfy this requirement.

R4-46-206, R4-46-205. Hearing on Denial of a License Licensure or Certificate Certification

Pursuant to A.R.S. § 41-1065, any applicant denied a license licensure or certificate certification by the Board may file a written request for hearing, within 30 45 days after issuance receipt of the notice of the denial. Any hearing shall be conducted under the formal hearing procedures prescribed in Article 3 of these Rules, a written request for hearing.

R4-46-207, R4-46-206. Renewal of a License or Certificate

A. No later than 30 days before expiration of an Appraiser's license or certificate, an Appraiser seeking to renew the license or certificate shall submit a completed application accompanied by the appropriate renewal application fees. Once the application has been filed, fees are non-refundable. To be eligible for a renewal of a license or certificate, an applicant shall:

1. Meet the requirements of A.R.S. Title 32, Chapter 36, and these rules;
2. Meet the continuing education requirements set forth in the Appraiser Qualification Criteria incorporated by reference in R4-46-201(A);
3. Pay the renewal and biennial federal registry fees.

B. In addition to the requirements in subsection (A), effective October 1, 2000, a renewal applicant shall demonstrate completion of a minimum of 14 hours of course work in USPAP within 4 years prior to expiration of the license or certificate. Courses used to satisfy this requirement cannot be used to satisfy the requirements of subsection (A)(2) unless the course was completed within 2 years prior to the expiration of the license or certificate.

C. If the last day for filing falls on a Saturday, Sunday, or legal holiday, the Appraiser may file the renewal form on the next business day.

A licensed or certified appraiser seeking to renew a license or certificate must submit a properly completed renewal form evidencing compliance with the Standards of Appraisal Practices set forth in R4-46-401 and the continuing education requirements set forth in the Appraiser Qualification Criteria previously adopted and incorporated by reference in these rules, along with the renewal fee, not later than 30 days

before the appraiser's license or certificate is scheduled to expire. If the last day for filing falls on a Saturday, Sunday, or legal holiday, the application must be received by the 1st business day thereafter. Once the renewal application has been filed, no fees will be refunded to the appraiser.

R4-46-208. Renewal of an Expired License or Certificate

A. An Appraiser may renew a license or certificate which has expired within 90 days of expiration. If the last day falls on a Saturday, Sunday, or legal holiday, the Appraiser may file a renewal on the next business day.

B. To apply for renewal of an expired license within the 90 day period, an Appraiser shall comply with the requirements of R4-46-207 and submit the delinquent renewal fee prescribed by R4-46-106. Once an application for renewal of an expired license or certificate has been filed, fees are non-refundable.

C. An Appraiser who fails to seek renewal within the time prescribed by this rule shall re-apply, meeting the requirements of R4-46-202(B).

R4-46-209, R4-46-207. Replacement License or Certificate

If an original license or certificate has been lost, damaged, or destroyed, or if the name of a licensee or certificate holder has been legally changed, the Appraiser a licensee or certificate holder may obtain a replacement duplicate license or certificate to replace the original license or certificate by filing the applicable a prescribed form and paying a copying the appropriate fee to the Board.

R4-46-210, R4-46-208. Change of Address

Licensed or certified Appraisers appraisers and applicants for a license or certificate licensure or certification shall must notify the Board in writing of any change in permanent business or residence address within 10 business working days of the such change.

ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS

R4-46-301. Investigations; Informal Proceedings; Summary Suspensions Disciplinary Proceedings; Board Action; Notice Requirements

A. The Board shall may investigate a written complaint alleging any apparent violations of A.R.S. Title 32, Chapter 36, or any of these Rules. Within 14 days after receipt of a complaint the Board shall notify the Respondent and provide the Respondent the opportunity to submit a written response within 21 days from the date of notice of the complaint. The notice shall include a copy of the complaint and request that the respondent address issues referred to in the complaint. The Respondent may request and the Board may grant a continuance not to exceed 30 days upon a showing of good cause.

B. Investigation

1. After receipt of the response or expiration of 21 days, as extended, whichever is earlier, the Board shall review the complaint to determine if further investigation is necessary. If the Board determines further investigation is necessary the Board may employ an investigator or investigators and shall notify the Respondent of the pending investigation.
2. When a Respondent's name appears on an agenda, the Respondent shall be notified according to A.R.S. Title 38, Chapter 3, Article 3.1.
3. If a matter is not resolved within 18 months of receipt of the response, it will be scheduled for review to determine if good cause exists to continue the investigation further. R4-46-301(B) is not retroactive. R4-46-301(B)

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only applies to investigations commenced after October 1, 1998. If, after completing its investigation, the Board finds that further action against the Respondent appraiser is not merited, the matter shall be dismissed.

- C. Any time after a complaint has been filed against a Respondent, but not later than 15 days prior to a scheduled formal hearing, the matter may be resolved by a settlement in which the Respondent agrees to accept discipline by consent in lieu of a disciplinary order. Discipline may include, but is not limited to, surrender or suspension of a license or certificate, a requirement that the Respondent successfully complete education courses, a requirement that the Respondent limit his or her scope of practice, or a requirement that the Respondent submit work product for professional peer review. If the Board determines the proposed settlement will adequately protect the public, the Board may accept the offer, with or without admissions, and enter an order of discipline consented to by the Respondent, incorporating the proposed settlement. If the Board finds that suspension or revocation may be warranted, it shall issue a notice of hearing for formal disciplinary proceedings. Statements made for the purpose of settlement are not admissible in a formal hearing.
- D. If, after evaluation of the complaint and any written response, in the opinion of the Board, it appears the Respondent is or may be in violation of the Board's rules or statutes, the Board may request an informal hearing with the Respondent. The Board shall provide the Respondent with 20 days notice of the date and time of the informal hearing from the date notice is mailed via certified mail or otherwise served as provided in the Arizona Rules of Civil Procedure. The notice of informal hearing shall include a statement of the matters asserted and issues involved, the Respondent's right to appear with or without legal counsel; and the Respondent's right to a formal hearing, held pursuant to A.A.C. R4-46-302. The Respondent may request and the Board may grant a continuance not to exceed 30 days upon a showing of good cause. During the informal hearing the Board shall swear witnesses, question the Respondent and witnesses, and deliberate. If the Board finds a violation of the rules or statutes, but the violation is not of sufficient seriousness to merit suspension or revocation, it may take any or all of the following actions:
1. Issue a decree of censure;
 2. Set a time period and terms of probation sufficient to protect the public welfare and safety and to educate the Respondent concerned. The Board may require the Respondent to:
 - a. Submit to an examination;
 - b. Obtain training or education;
 - c. Submit to supervision or peer review; or
 - d. Accept restrictions on the nature and scope of the Respondent's practice.
- E.D. If the Board finds that the public welfare or safety imperatively requires emergency action and incorporates a finding to that effect in its order, the Board may order a summary suspension of a license or certificate pending proceedings for revocation or other action. If in the event that such an order of summary suspension is issued, the Board shall serve the Respondent appraiser with a written notice of summary suspension and formal hearing, listing setting forth the charges made against the Respondent appraiser, and setting a formal hearing within 30 days.
- F. A Respondent may refuse a request to appear at an informal hearing.

R4-46-302. Informal Disposition

At any time after formal disciplinary proceedings have been instituted against a licensed or certified appraiser, the appraiser may submit to the Board an offer of settlement whereby the appraiser agrees to accept sanctions in lieu of formal disciplinary action. Sanctions may include, but are not limited to, license or certificate suspension, a requirement that the appraiser enroll in continuing education courses, a requirement that the appraiser limit his/her scope of practice, or a requirement that the appraiser submit work product for professional peer review. If the Board determines that the proposed settlement will adequately protect the public, the Board may accept the offer and enter a decision consented to by the appraiser incorporating the proposed settlement.

R4-46-302, R4-46-303. Formal Hearing Procedures

- A. The Board shall issue a notice of hearing and formal complaint for formal disciplinary proceedings if:
1. The Respondent refuses an invitation to an informal hearing;
 2. After an informal hearing, the Board determines suspension or revocation may be warranted;
 3. The Respondent is aggrieved by the Board's decision in an informal hearing; or
 4. After completing its investigation, the Board finds that suspension or revocation may be warranted.
- B. A. Notice procedures: Except as provided in R4-46-301(E), (D), the Board shall provide notice of a formal hearing to a Respondent, including but not limited to disciplinary hearings, shall be given to the license or certificate holder at least 30 days prior to the date set for the hearing. The Board shall notify the Respondent. Notice shall be served personally or by certified mail or personal service at the Respondent's to the address last known address of record by the Board. Unless otherwise specified, any notice provided for in these Rules is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of Civil Procedure.
- C.B. On its own motion or a motion of a party and a showing of good cause, the Board may hear a case or have the case heard by an administrative law judge. The Board shall not deny the motion without good cause. The Board may accept, reject or modify the administrative law judge's recommended decision and shall issue a final order. Hearing Officer: The Board may appoint a hearing officer to hear any contested case before the Board. The hearing officer shall submit to the Board a written recommendation of findings of fact, conclusions of law, and order. The recommendation of the hearing officer may be approved or modified by the Board. The Board's decision approving or modifying the hearing officer's recommendation shall be the final decision of the Board, subject to the filing of a motion for rehearing.
- D.C. Board Hearings:
1. The Board may conduct a hearing without adherence to the rules of evidence used in civil proceedings. The Board shall include the Respondent's application and disciplinary records as evidence in the hearing record.
 2. In all hearings required or permitted by statute, order of the Board, or these Rules, the Party seeking relief has the burden of proof and will present evidence 1st. Conduct of hearings: Hearings may be conducted without adherence to the Rules of Evidence required in civil proceedings. All witnesses at a hearing shall testify under oath or affirmation. The parties may make an opening and closing statement. In the case of a disciplinary proceeding, evidence in support of the charges or of the Board's order shall be presented first, then the respondent may present evidence in support of the respon-

dent's position, and then there may be rebuttal and surrebuttal evidence. The appraiser's licensure or certification records on file with the Board shall be included as evidence in the hearing record. In the case of all types of hearings required or permitted by statute, order of the Board, or these rules, the party seeking relief shall have the burden of proof and will present the party's evidence first.

E.D. Failure to answer or appear:

1. Upon the motion of the State, the failure Failure of a the Respondent to answer within 20 days of notice of a formal complaint without good cause may be deemed an admission by the Respondent of the commission of the acts set charged in the formal complaint. The Respondent shall answer and defend within 10 days of the filing of the motion to for default. In the absence of an answer or response the The Board may grant the motion for default, then vacate the formal hearing and impose any sanction provided by this Article.
2. The failure Failure of a Party parties to appear for a formal hearing without good cause shall leave the Board free to act upon the evidence and other information at hand without further notice to the appraiser applicant.

F. The Board shall make and keep record of a hearing and in the case of disciplinary hearings or where requested by a Party or ordered by the Board, a transcript shall be prepared and filed with the Board. If the transcript is prepared at the request of a Party, the cost of the transcript shall be paid by the Party making the request, unless the Board, for good cause shown waives assessment of this cost.

A record of the hearing shall be made and kept by the Board and, in the case of disciplinary hearings or where requested by a party or ordered by the Board, a transcript shall be prepared and filed with the Board. If the transcript is prepared at the request of a party, the cost of the transcript shall be paid by the party making the request unless the Board, for good cause shown, waives assessment of such costs.

G. A Party may request and the Board may grant a continuance of a hearing date or any other deadline imposed by R4-46-302 upon a showing of good cause.

R4-46-303, R4-46-304. Rehearing or Review of the Board's Decision Decisions

- A. Except as provided in subsection (H) of this section, (G), any Party party in a contested case before the Board who is aggrieved by a decision rendered in a case may file with the Board, not later than 15 days after service of the decision, a written motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon personal service or 5 days after the date the decision is mailed to the Party's last known address. The Party shall attach a full supporting memorandum specifying the grounds for the motion, of the decision specifying the particular grounds therefore. For the purposes of this subsection Section, a decision is shall be deemed to have been served when personally delivered or mailed by certified mail to the Party's party's last known address of record, reported residence or place of business.
- B. The opposing Party may file a response within 15 days after service of the motion for rehearing or review, or by a date ordered by the Board, whichever is later. The Party shall support the response with a memorandum discussing legal and factual issues. A response to a motion for rehearing may be filed within 10 days after service of the motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. Either Party may request or the Board may order oral argument. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

D. The Board may grant rehearing or review for any of the following causes materially affecting a Party's rights:

1. Irregularity in the administrative proceedings of the Board agency, or any other abuse of discretion which deprived, whereby the moving Party party was deprived of a fair hearing;
2. Misconduct of the Board or any Party party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient sanction;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings or;
7. Unjustified decision based upon the evidence, or a decision that is contrary to law.

E.D. The Board may affirm or modify the decision or grant a rehearing to any Party party on all or part of the issues for any of the reasons set forth in subsection (D) (C). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order. The rehearing, if granted, shall be limited to matters specified by the Board, on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

F.E. Not later than 30 15 days after a decision is rendered, the Board may order a rehearing or review of its decision on its own initiative, for any reason for which it might have granted a rehearing or review of its decision relief on motion of a Party party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in its original order.

G.F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing Party party may submit, within 10 days after service, serve opposing affidavits with the response. Reply affidavits may be permitted.

H.G. If, in a particular decision, the Board makes specific findings that the immediate effectiveness of such a decision is necessary for the immediate preservation of the public welfare or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final administrative decision without an opportunity for a rehearing, A Party may seek any application for judicial review of the decision shall be made within the time limits permitted by statute for the applications for judicial review of the Board's final decisions.

R4-46-304, R4-46-305. Conviction and Judgment Disclosure Duty to Disclose Conviction and/or Entry of Civil Judgment

- A. When an Appraiser, Property Tax Agent, or Course Provider is convicted of any act which is or would be punishable as a felony involving moral turpitude in this state, or any crime which is substantially related to the respective qualifications, functions, and duties of an Appraiser, Property Tax Agent, or Course Provider, the convicted person shall notify the Board within 20 days of entry of a plea of guilty or conviction.

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- B.** When a civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal or mass appraisal is entered against an Appraiser, Property Tax Agent, or Course Provider, the person against whom the judgment is entered shall notify the Board within 20 days of entry of judgement. Upon being convicted of any act which is or would be punishable as a felony involving moral turpitude in this state, a crime which is substantially related to the qualifications, functions, and duties of a person developing appraisals and communicating appraisals to others or upon entry of a civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal, an appraiser licensed or certified in this state shall notify the Board within 20 days of the entry of a plea of guilty, conviction, or entry of a civil judgment.

R4-46-305, R4-46-306 Terms and Conditions of Reapplication after Revocation

- A.** An applicant who re-applies Persons reapplying after revocation of a license, certificate, certification or course approval, shall must submit an original application for license, or certificate, or course approval licensure or certification consistent with these rules. Article 2. The applicant—Such application shall attach have attached thereto substantial evidence to the application that the issuance of a the license, or certificate, or course approval will no longer constitute a threat to the public welfare and safety.
- B.** Criteria for determination of application for issuance: The Board shall make a such determination of each application that is as it deems consistent with the public safety and welfare.

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every state-licensed or certified Appraiser appraiser, in performing the acts and services of a state-licensed or certified Appraiser appraiser, shall comply with the 1995 Edition of the Appraisal Standards Board Uniform Standards of Professional Appraisal Practice (USPAP), 1998 Edition, published by the Appraisal Foundation, which are incorporated by reference and not including any subsequent amendments, restatements, revisions, and/or replacement standards, published by the Appraisal Foundation which are on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the USPAP may be obtained from the Appraisal Foundation. Copies of the Uniform Standards of Professional Appraisal Practice are available from the Board or the Appraisal Foundation.

ARTICLE 5. PREREQUISITE EDUCATION COURSE APPROVAL

R4-46-501. Prerequisite Education Course Approval

- A.** A Course Provider An applicant seeking course approval for a prerequisite education course shall apply to the Board on the applicable on a prescribed form and pay accompanied by the appropriate fee.
- B.** The following requirements apply to courses submitted for approval:
1. The Course Provider course shall follow be in accordance with the prerequisite education standards set forth in the Appraiser Qualification Criteria previously incorporated by reference in R4-46-201;(B), (C), and (D);
 2. The Course Provider course shall use follow an outline, and a text or other written materials. The Course Provider shall furnish the Board with the outline, text, or other written material at the time of application. Lack of

documentation may result in the delay or denial of course approval; agenda defined by a course syllabus and shall consist of an organized program of learning which includes the use of written course materials;

3. If a course is required for a license or certificate, the Course Provider shall give a comprehensive examination pertinent to the topics addressed in the course.
- 4.3. The Course Provider course activities shall conduct the course be conducted in a setting physically suitable to the educational activity of the program; and
5. The Course Provider shall submit proof of compliance with the following standards. The Course Provider shall:
4. Course approval shall be contingent upon submission of proof that the course sponsor complies with the following standards, monitoring methods, and systems for recording attendance:
 - a. Apply the prerequisite education criteria set forth in the Appraiser Qualification Criteria set forth in subsection (B)(1); previously adopted and incorporated by reference in these rules;
 - b. Provide a copy of an attendance certificate to the student after completion of the course, indicating the name of the Course Provider, the name of the student, the title of the course, the number of classroom hours completed in the course, the dates the course was taken, and whether the students successfully completed any final examination;
 - c.b. Maintain a record of registration, attendance, and examination for each student, for 6 years following the student's attendance enrollment in the course, and provide a copy copies of the record at to the student upon request of the Board or the student;
 - d.e. Deny course credit to any student who does not meet requirements of the Appraisal Qualification Board; Provide certificates of completion or certified transcripts to each student upon completion of a course; and
 - e.d. Use Utilize instructors with meeting 1 or more of the following qualifications: minimum requirements:
 - i. At least, a bachelor's A Bachelor's degree or higher in the field of instruction or in a closely related field of instruction, or
 - ii. Five years of work experience in the subject taught, or
 - iii. A combination of education and work experience which the Board determines is to be substantially equivalent to the requirements in subsections (B)(4)(d)(i) and (ii).
- C. Course approval lasts for a period of 1 year, expiring at the end of the month in which approval was granted, at which time the Course Provider shall re-apply for course approval of a course previously approved. No later than 30 days prior to the expiration date, a Course Provider may apply for review of a course previously approved on the form provided by the Board and pay the appropriate fee. Any substantive change in the materials to be addressed in the classroom, including but not limited to changes in the course outline, text, or other written material will require immediate re-application and approval by the Board. The Board may investigate any information which appears to show that an approved course is no longer in compliance with the prerequisite standards set forth in this Section or is no longer operating as indicated in the application for course approval. The

~~Board may determine whether such information requires review or revocation of course approval.~~

- ~~D. Out-of-state course approval: The Board shall waive the course approval fee for a course offered outside out of the state if the course was approved by the appraisal licensing or certifying authority in that state and the Board determines that the course meets the standards for course approval set forth in these rules this Section.~~
- ~~E. The Board shall investigate and may deny, revoke, or suspend course approval for any of the following acts or omissions:~~
- ~~1. Failure to comply with the education requirements set forth in this Article.~~
 - ~~2. Failure to operate as indicated in the application for course approval.~~
 - ~~3. Failure to instruct in a manner consistent with the outline and materials previously approved by the Board.~~
- ~~F. If the Board finds that the public welfare or safety requires emergency action and incorporates a finding to that effect in its order, the Board shall order a summary suspension of course approval pending proceedings for revocation or other action. If an order of summary suspension is issued, the Board shall serve the Course Provider with a written notice of summary suspension and formal hearing, listing the charges against the Course Provider and setting a formal hearing within 30 days.~~

R4-46-502. Prerequisite Education Course Equivalency Approval

An applicant for a license or certificate who wants to fulfill a course requirement with a course that has not been previously approved by the Board shall demonstrate that the course satisfies the requirements set forth in this Article. Applicants for original appraiser licensure or certification who desire to fulfill prerequisite education requirements with courses which have not been previously approved by the Board must demonstrate that such courses satisfy the prerequisite education standards set forth in this Article.

R4-46-503. Hearing on Denial of Prerequisite Education Course Approval

Any applicant or Course Provider denied prerequisite education course approval may file a written request for a hearing within 30 15-days after service receipt of the notice of the denial. The Board shall process all hearings and disciplinary matters involving course approval in a manner consistent with the formal hearing procedures prescribed in Article 3.

ARTICLE 6. CONTINUING EDUCATION

R4-46-601. Continuing Education Course Approval

- ~~A. An applicant seeking approval for a continuing education course shall apply to the Board on a prescribed form accompanied by the appropriate fee.~~
- ~~B. The following requirements apply to courses submitted for approval:~~
- ~~1. The course shall be in accordance with the Continuing Education standards set forth in the Appraiser Qualification Criteria previously incorporated by reference in R4-46-201(B), (C), (D);~~
 - ~~2. The course shall follow an agenda defined by a course syllabus and shall consist of an organized program;~~
 - ~~3. Course activities shall be conducted in a setting physically suitable to the educational activity of the program; and~~
 - ~~4. Course approval shall be contingent upon submission of proof that the course sponsor complies with the follow-~~

~~ing standards, monitoring methods, and systems for recording attendance:~~

- ~~a. Apply the continuing education criteria set forth in the Appraiser Qualification Criteria previously adopted and incorporated by reference in these rules;~~
 - ~~b. Provide Board-approved certificates of completion or certified transcripts to each student upon completion of a course;~~
 - ~~c. Deny continuing education credit to any student who does not have at least a 90% attendance record;~~
 - ~~d. Maintain a record for each student for a period of 2 years following enrollment, the record to include the student's name, address, and certificate number;~~
 - ~~e. Utilize an instructor meeting 1 or more of the following minimum requirements:~~
 - ~~i. A Bachelor's degree or higher in the field of instruction or in a closely related field of instruction; or~~
 - ~~ii. Five years of work experience in the subject taught; or~~
 - ~~iii. A combination of education and work experience determined by the Board to be substantially equivalent to requirements set forth in subsections (D)(4)(e)(i) and (ii).~~
- ~~G. The Board may investigate any information which appears to show that an approved course is no longer in compliance with the continuing education standards set forth in this Section or is no longer operating as indicated in the application for course approval. The Board may determine whether such information requires review or revocation of course approval.~~
- ~~D. Out-of-state course approval: The Board shall waive the course approval fee for a course offered out of state if the course was approved by the appraisal licensing/certifying authority in that state and if the Board determines that the course meets the standards for course approval set forth in this Section.~~

ARTICLE 6. PROPERTY TAX AGENTS

R4-46-601. Standards of Practice

The Board may revoke or suspend an agent's registration or otherwise discipline a Property Tax Agent to the extent permitted by A.R.S. § 32-3654 for any of the following acts or omissions:

1. Engaging in an activity that leads to a conviction for a crime involving the tax profession;
2. Operating beyond the boundaries of an agreed relationship with an employer or a client;
3. Inferring or implying representation of a person or firm that the agent does not represent, or filing a document on behalf of a taxpayer without specific authorization of the taxpayer;
4. Violating the confidential nature of the Property Tax Agent-client relationship, except as required by law;
5. Inappropriately offering or accepting anything of value with the intent of inducing or in return for a specific action;
6. Assigning, accepting, or performing a tax assignment that is contingent upon producing a predetermined analysis or conclusion;
7. Issuing an appraisal analysis or opinion, in the performance of a tax assignment, that fails to disclose bias or the accommodation of a personal interest;

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8. Willfully furnishing inaccurate, deceitful, or misleading information, or willfully concealing material information in the performance of a tax assignment;
9. Preparing or using, in any manner, a resume or statement of professional qualifications that is misleading or false;
10. Promoting a tax agent practice and soliciting assignments by using misleading or false advertising;
11. Soliciting a tax assignment by assuring a specific result or by stating a conclusion regarding that assignment without prior analysis of the facts;

12. Performing an appraisal as defined by A.R.S. § 32-3601 unless licensed or certified by the Board as an appraiser.

R4-46-602. Disciplinary Proceedings: Board Action: Notice Requirements

The Board shall process all hearings and disciplinary matters involving Property Tax Agents in a manner consistent with the formal hearing procedures prescribed by Article 3 and consistent with A.R.S. § 32-3654.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION SECURITIES

PREAMBLE

1. Sections Affected

R14-4-141
R14-4-142
R14-4-144
R14-4-145

Rulemaking Action

New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 44-1821(A), 44-1845, 44-1941(C), 44-1945(B), and 44-3152(B)

Implementing statutes: A.R.S. §§ 44-1845, 44-1941(C), 44-1945(B), and 44-3152(B)

Constitutional authority: Arizona Constitution Article XV §§ 4, 6 and 13

3. The effective date for the rules (if different from the date the rules are filed with the Office):

Not applicable.

4. A list of all previous notices appearing in the Register addressing the final rules:

Notices of Rulemaking Docket Opening:

- 1 A.A.R. 171, March 10, 1995 (R14-4-141)
- 2 A.A.R. 3691, August 23, 1996 (R14-4-142)
- 3 A.A.R. 2176, August 15, 1997 (R14-4-144)
- 3 A.A.R. 2176, August 15, 1997 (R14-4-145)

Notices of Proposed Rulemaking:

- 4 A.A.R. 84, January 9, 1998 (R14-4-141)
- 4 A.A.R. 218, January 16, 1998 (R14-4-142)
- 4 A.A.R. 284, January 23, 1998 (R14-4-144)
- 4 A.A.R. 304, January 30, 1998 (R14-4-145)

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Brian J. Schulman, General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007
Phone: (602) 542-4242
Fax: (602) 542-7470

6. An explanation of the rules, including the agency's reasons for initiating the rules:

Each of the 4 proposed rules is intended to foster and encourage capital formation in Arizona, while recognizing the need for investor protection.

R14-4-141. Rule 141 provides a limited exemption from the securities and dealer registration requirements of A.R.S. §§ 44-1841 and 44-1842 for issuers engaging in solicitations of interest. Rule 141 permits an issuer (or a dealer acting on behalf of an issuer) to use solicitations of interest to assess investor interest in a potential securities offering. A solicitation of interest made in compliance with Rule 141 is an exempt offer; however, Rule 141 provides no exemption for sales of securities. Rule 141 sets forth in detail the technical requirements and procedures an issuer must comply with in order to solicit investor interest without engaging in an unregistered offering of securities. Rule 141's purpose is to: (1) allow issuers to assess the probability of success of a securities offering prior to incurring the often considerable expense of registering the offering; and (2) enable issuers to significantly increase the probability of an offering's success by soliciting investor input on features that would make the investment more attractive.

R14-4-142. Rule 142 provides an exemption from the registration requirements of A.R.S. §§ 44-1841 and 44-1842 and the notice requirements of A.R.S. § 44-3321 for issuers who offer securities for sale on the Internet, provided certain conditions are met. Rule 142 is inapplicable to Internet offerings from Arizona. It is intended only to provide an exemption for those issuers outside of Arizona who have no intention of making an offer or sale to persons in Arizona at the time of their offering.

An issuer who relies upon Rule 142 may subsequently offer and sell securities in Arizona pursuant to, and in compliance with, a valid exemption from registration, by filing a registration statement pursuant to A.R.S. §§ 44-1871, 44-1891, 44-1901 or 44-1902, or by filing a notice pursuant to A.R.S. § 44-3321. Where a registration statement is required, the issuer may not make a sale of securities in Arizona until 30 days after the filing of the registration statement or the effective date of the registration statement, whichever is later.

Rule 142's purpose is to permit capital formation by allowing issuers the opportunity to utilize more advanced methods of communication to raise capital. Rule 142 allows issuers who do not intend to offer securities in Arizona to access capital markets by offering the securities for sale on the Internet without imposing otherwise applicable Arizona registration requirements.

R14-4-144. Rule 144 provides an alternative method of securities registration for certain issuers who choose to have suitability standards applied to an offering. Rule 144 permits the imposition of suitability standards in lieu of the merit review provisions of A.R.S. §§ 44-1876, 44-1877, 44-1878, and 44-1921(1), (3), and (4), and the rules under those provisions, except when the offer or sale of securities works or would tend to work a fraud or deceit upon the investors. An issuer who meets the conditions of A.R.S. § 44-1845(B)(1) and the other criteria set forth in Rule 144 is eligible to register its securities offering using the suitability standards set forth in Rule 144. Those standards limit the offer and sales of securities to only those investors meeting certain net income or net worth requirements.

Rule 144 is not available to issuers of direct participation programs. Those programs already have a registration procedure available that utilizes suitability standards in lieu of merit review. Further, Rule 144 is not available to issuers falling within any of the disqualification provisions of A.R.S. § 44-1901(G)(1)-(6).

R14-4-145. Rule 145 provides an exemption from the dealer and salesman registration requirements of A.R.S. § 44-1842 and from the investment adviser licensure or notice filing requirements and investment adviser representative licensure requirements of A.R.S. § 44-3151. Rule 145 allows a computer network or operator to provide information to certain sophisticated investors regarding various companies, provided certain conditions are met.

There are several restrictions and requirements that a network and operator must meet before being eligible to use Rule 145. For example, a network or an operator may not: (1) provide advice about particular opportunities or make recommendations regarding any companies; (2) receive compensation other than flat fees to cover administrative costs; (3) participate in any negotiations between investors and any companies; (4) directly or indirectly assist any investor or company with any transaction; (5) handle funds or securities involved in any transaction; or (6) hold themselves out as providing any securities-related services other than a listing or matching service.

Rule 145 also restricts the companies that may be listed on the network. For example, a company may not be listed on the network if it is the subject of certain judicial or administrative actions. These restrictions prohibit so-called "bad boy" companies from participating on the network, lessening the likelihood of illegal or fraudulent activity. Rule 145 also provides that access to the network be limited to accredited investors. These investors generally include certain types of institutional investors and individuals with substantial net worth or substantial income. This provision provides for investor protection by limiting the pool of investors to only those that have the financial capability to invest.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Rule 141, 142 and 144 may diminish the Arizona Corporation Commission's authority by exempting certain transactions from securities registration or otherwise altering registration requirements. Rule 141 will diminish the grant of authority to require the registration of the offer of securities made pursuant to a solicitation of interest. Issuers complying with Rule 141 will be able to offer securities to investors without registration of the securities. However, Rule 141 does not permit any sales to be made without registration. Rule 141 significantly benefits issuers by allowing them to assess the probability of an offering's success before incurring the expense of registering the securities under the Securities Act of Arizona. The risk of harm to the general investing public is limited, as Rule 141 exempts only offers, not the sale of the securities. The Commission also retains anti-fraud jurisdiction over any offering.

Rule 142 may be construed as diminishing the Commission's authority. An Internet communication is directed generally to anyone who is able to access it. However, it is not necessary or appropriate to require the registration of securities that will be

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offered by an issuer on the Internet, but not offered in Arizona. It would constitute an undue hardship on many legitimate securities issuers who do not intend to offer or sell securities in Arizona if they are required to register all offerings placed on the Internet with the Securities Division. Securities offered for sale on the Internet may be sold in Arizona only if the issuer properly registers or notices the securities prior to the sale, or relies on, and complies with, another exemption available under the Securities Act. Thus, the risk of harm to the general investing public in Arizona is very limited. The significant statewide interest in promoting capital formation for businesses should be advanced without any significant loss of authority to the Commission.

Rule 144 may diminish a previous grant of authority in that certain issuers will be able to avail themselves of a special registration procedure. The offerings may be subject to suitability standards as opposed to merit review standards. However, Rule 144 serves the significant statewide interest of making it easier for small businesses to raise capital in Arizona. Businesses whose offerings may not have qualified for registration in Arizona may be able to register by limiting their securities offering in Arizona to investors who meet certain suitability standards. The ability to offer the securities is beneficial for the business as it gives the issuer an avenue to raise capital. The offering also is beneficial to investors who meet the suitability standards, as they will have new opportunities for investment. Rule 144 provides for investor protection by limiting the issuers who can utilize the Rule and by limiting the pool of investors to those who are deemed to have the financial capability to invest.

8. The summary of the economic, small business and consumer impact:

With respect to all 4 rules, the Commission is exempt from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(3).

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

There are no changes to Rule 142, however, the Commission made changes to Rule 141, 144, and 145. The Commission changed Rules 141, 144, and 145 by deleting language that authorized the Director of Securities to waive the respective disqualification provisions in each of the rules. In addition, the Commission changed subsection (D) of Rule 144 by adding language to clarify the term "direct participation program" and by deleting language that could have been construed as giving the Director of the Securities Division broad discretion to determine what programs were disqualified under this subsection. The Commission also amended Rule 145. In response to certain public comments, the Commission added a "reasonable belief" standard to subsections (B)(7) and (B)(8). The Commission deleted the definition of "development stage company" in subsection (A)(2) and amended corresponding language in subsection (B)(11). Finally, the Commission changed subsection (B)(9) to clarify the intended prohibition referenced in that subsection.

10. A summary of the principal comments and the agency response to them:

The Commission received informal oral comments on all 4 rules during the course of the rulemaking process. In addition, a member of the Arizona State Bar attended the March 3, 1998 hearings on the 4 rules and spoke in support of each. The Commission did not receive any comments in opposition to any of the 4 rules. The Commission received written comments only with respect to Rule 145, as follows:

Comment: A prohibition of development stage companies is both unnecessary and frustrates the purpose of Rule 145.

Response: The Commission struck the definition of a development stage company, and narrowed the prohibition, excluding companies with no specific business plan or a business plan that includes a merger or acquisition with unidentified persons or entities.

Comment: The prohibitions in subsections (B)(7) and (B)(8) may be construed as creating a due diligence standard of liability that could be the basis for private lawsuits or violations of Rule 145.

Response: The Commission added a "reasonable belief" standard to the 2 subsections.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the text:

None.

13. Whether any of the rules were previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of the final rule:

Not applicable.

14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION SECURITIES

**ARTICLE 1. IN GENERAL RELATING TO THE
ARIZONA SECURITIES ACT**

Section

R14-4-141. Solicitation of Interest Prior to the Filing of the Registration Statement

R14-4-142. Securities Offerings on the Internet

R14-4-144. Suitability Standards pursuant to A.R.S. § 44-1845

R14-4-145. Exemption for Electronic Venture Capital Networks

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-141. Solicitation of interest prior to the filing of the registration statement

A. The following definitions shall apply to this Section:

1. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.
2. "SEC" means the United States Securities and Exchange Commission.
3. "Solicitation of Interest Form" means the document used to solicit indications of interest in a security, which must contain, in all material respects, the information set forth in subsection (J).

B. An offer, but not a sale, of a security made by an issuer, or on behalf of an issuer by a dealer registered under Article 9 of the Securities Act, for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from A.R.S. § 44-1841, and the issuer and its employees are exempt from A.R.S. § 44-1842, if all of the following conditions are satisfied:

1. The issuer is, or will be, a business entity organized under the laws of 1 of the states or possessions of the United States or 1 of the provinces or territories of Canada or 1 of the states of Mexico, and is not conducting or intending to conduct a blind pool offering as defined in A.R.S. § 44-1801(1).
2. The issuer intends to register the security in Arizona prior to sale or the securities will be sold pursuant to a valid exemption in Arizona.
3. Ten business days prior to the initial solicitation of interest under this Section, the issuer files with the Commission a Solicitation of Interest Form along with any other items to be used, directly or indirectly, to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice or advertisement to be published.
4. Five business days prior to usage, the issuer files with the Commission any material amendments to the foregoing items or additional items to be used to conduct solicitations of interest, except for items provided to a particular offeree pursuant to a request by that offeree.
5. The issuer does not use any Solicitation of Interest Form, script, advertisement or other item to solicit indications of interest, which the Division has notified the issuer not to distribute.
6. During the solicitation of interest period, the issuer, or the dealer on behalf of the issuer, does not solicit or accept money or a commitment to purchase securities.
7. Any published notice, published advertisement or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief general description of the issuer's business and products, and the 1st paragraph of the legend required in the Solicitation of Interest Form pursuant to subsection (J)(2)(g).

8. All communications with prospective investors made in reliance on this Section must cease after a registration statement is filed in Arizona.

C. The issuer, or the dealer on behalf of the issuer, may communicate with any offeree about the contemplated offering provided the offeree is supplied the most current Solicitation of Interest Form no later than 5 business days from the communication. The requirements of this subsection do not apply to issuer communications made solely in the form of scripted broadcasts, published notices or published advertisements.

D. Unless the disqualification is waived or ceases to exist under subsection (E), the exemption of subsection (B) is not available if the issuer or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities:

1. Has been convicted of a felony of which fraud is an essential element, or which involves racketeering, or a transaction in securities, or an offense listed in A.R.S. § 13-2301(D)(4).
2. Has been convicted within 10 years of the date of the filing of the Solicitation of Interest Form of a misdemeanor of which fraud or dishonesty is an essential element, or involving racketeering, or a transaction in securities.
3. Is subject to an order, judgment, or decree of any court of competent jurisdiction entered within 10 years of the date of the filing of the Solicitation of Interest Form, which temporarily, preliminarily or permanently enjoins or restrains such person from engaging in, or continuing, any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, racketeering or consumer protection laws.
4. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within 5 years of the date of the filing of the Solicitation of Interest Form.
5. Is subject to the reporting requirements of the Securities Exchange Act of 1934 and has not filed all required reports during the 12 calendar months before the filing of the Solicitation of Interest Form.
6. Is subject to an SEC order denying or revoking registration as a broker or dealer in securities under the Securities Exchange Act of 1934, or is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding 6 months, or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934.

E. The Commission may, at its discretion, waive any disqualification caused by subsection (D). In addition, a disqualification under subsection (D) ceases to exist if:

1. The basis for the disqualification is removed by the jurisdiction creating it;
2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification;
3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.

F. A failure to comply with all of the requirements of subsections (B) and (C) will not result in the loss of the exemption from A.R.S. §§ 44-1841 and 44-1842 for any offer to a particular individual or entity if the issuer shows all of the following:

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1. The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;
 2. The failure to comply was insignificant with respect to the offering as a whole; and
 3. A good faith and reasonable attempt was made to comply with all applicable conditions of subsections (B) and (C).
- G.** Any issuer, or other person on behalf of an issuer, who solicits indications of interest under this Section, may not make offers or sales in reliance on A.R.S. § 44-1844(A)(1) or A.A.C. R14-4-126 until 6 months after the last communication with a prospective investor made pursuant to this Section.
- H.** All offers and communications, including but not limited to, the Solicitation of Interest Form, made in reliance on this Section are subject to the anti-fraud provisions of the Securities Act.
- I.** The Director of Securities may revoke the availability of this exemption prior to any particular solicitation of interest with respect to a particular issuer or transaction if the Director of Securities determines that there is a reasonable likelihood that the solicitation of interest would tend to work a fraud or deceit upon the offerees. In the event the Director of Securities makes such a determination, the issuer of the solicitation of interest may request a hearing in accordance with the provisions of Article 11 of the Securities Act by notifying the Commission within 10 days after written notice of the Director's determination.
- J.** The following sets forth the minimum information that must be included in a Solicitation of Interest Form. Additional information may be included. Except for the title, the required information may be presented graphically in any manner.
1. The title of the Solicitation of Interest Form must include the phrase: "SOLICITATION OF INTEREST."
 2. The Solicitation of Interest Form must include each of the following items:
 - a. Name of the issuer;
 - b. Street address of the issuer's principal office;
 - c. Issuer's telephone number;
 - d. Date and place of organization of the issuer;
 - e. Dollar amount of the proposed offering;
 - f. Name of the issuer's chief executive officer or equivalent;
 - g. The following legend, or a legend which is substantially equivalent in plain and concise language:

"THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

NO SALES OF THE SECURITIES WILL BE MADE, OR COMMITMENT TO PURCHASE ACCEPTED, UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR [PROSPECTUS] THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES

HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING CIRCULAR [PROSPECTUS] IS REGISTERED IN THIS STATE AND IS QUALIFIED OR REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION."

- h. A statement indicating whether the issuer is in the development stage, is conducting operations, has never conducted operations, or other applicable description;
- i. A general description of the issuer's business or proposed business including the products or goods that are, or will be, produced or services that are, or will be, rendered, how these products or services are, or will be, produced or rendered, and how and when the issuer intends to carry out its activities;
- j. A general description of the purposes for which the issuer intends to use the proceeds of the proposed offering;
- k. The following information for all executive officers and directors: name, title, office, street address, telephone number, employment history (employers, titles and dates of positions held during the past 5 years), and education if less than 5 years of business experience (degrees, schools and dates).

R14-4-142. Securities offerings on the Internet

- A.** Scope of Section. This Section applies to any offer for sale of securities placed on the Internet, except for those offers for sale from Arizona. As used in this Section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems, or similar media.
- B.** An offer for sale of securities placed on the Internet by, or on behalf of, an issuer, involving securities that will not be sold in Arizona pursuant to the Internet offer, shall be exempt from the provisions of A.R.S. §§ 44-1841 and 44-3321, and the offeror of such securities shall be exempt from A.R.S. § 44-1842, provided that:
1. The Internet offer for sale prominently and conspicuously indicates on the cover page of any offering document and on any subscription agreement document (a) that the securities are not being offered to persons in Arizona, or (b) in which specific states, other than Arizona, the securities are being offered;
 2. The offer for sale is not otherwise specifically directed to any person in Arizona by, or on behalf of, the issuer; and
 3. No sales of the issuer's securities are made in Arizona as a direct or indirect result of the Internet offer for sale.
- C.** Any issuer who places an offer for sale of securities on the Internet in accordance with this Section may subsequently offer and sell such securities to persons in Arizona pursuant to a valid exemption from registration, or by filing a registration statement pursuant to A.R.S. §§ 44-1871, 44-1891, 44-1901 or 44-1902, or by filing a notice pursuant to A.R.S. § 44-3321. Where a registration statement is required, the issuer shall not make a sale of such securities to a person in Arizona until 30 days after the filing of the registration statement or the effective date of the registration statement, whichever is later.

R14-4-144. Suitability standards pursuant to A.R.S. § 44-1845

- A.** Any issuer engaging in a transaction of a type specified in A.R.S. § 44-1845(B)(1) may apply for a special registration. Pursuant to A.R.S. § 44-1845(C), the special registration will impose the suitability standards of subsections (B) or (C) on the transaction in lieu of the conditions and standards prescribed under A.R.S. §§ 44-1876, 44-1877, 44-1878, 44-1921(1), (3), and (4), and the rules under those Sections, except when the sale of securities works or would tend to work a fraud or deceit upon the investors.
- B.** For all offerings listed on the Nasdaq SmallCapSM Market, the dealer, or the issuer if engaging in the sale of its securities, must have a reasonable belief that the potential investor satisfies any of the following conditions:
1. minimum of \$100,000, or \$150,000 when combined with spouse, in gross income during the prior year and a reasonable expectation that the investor will have such income in the current year; or
 2. minimum net worth of \$250,000, or \$300,000 when combined with spouse, exclusive of home, home furnishings and automobiles, with the investment not exceeding 10% of the net worth of the investor, together with spouse, if applicable.
- C.** For offerings not listed on the Nasdaq SmallCapSM Market, the dealer, or the issuer if engaging in the sale of its securities, must have a reasonable belief that the potential investor satisfies any of the following conditions:
1. minimum of \$150,000, or \$200,000 when combined with spouse, in gross income during the prior year and a reasonable expectation that the investor will have such income in the current year; or
 2. minimum net worth of \$350,000, or \$400,000 when combined with spouse, exclusive of home, home furnishings and automobiles, with the investment not exceeding 10% of the net worth of the investor, together with spouse, if applicable.
- D.** The suitability standards specified in this Section are not available for direct participation programs, including real estate programs, real estate investment trusts, commodity pools, oil and gas programs, equipment leasing programs, and other similar programs that let investors participate directly in the cash flow and tax benefits of the underlying investments.
- E.** The issuer, or any of its predecessors, affiliates, directors, officers, general partners or beneficial owners of 10% or more of any class of its equity securities, or any underwriter of the securities shall not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
- F.** The Commission may, at its discretion, waive any disqualification caused by subsection (E).
- G.** Any disqualification caused by subsection (E) shall cease to exist if any of the following occurs:
1. The basis for the disqualification has been removed by the jurisdiction creating it.
 2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- H.** Adherence to a suitability standard imposed in connection with an offering subject to this Section, by condition or otherwise, shall not relieve a dealer from compliance with A.A.C. R14-4-130(A)(4).

- I.** Any offering document used in connection with an offering in which suitability standards are imposed under this Section shall prominently and conspicuously include a description of the applicable suitability standards.

R14-4-145. Exemption for electronic venture capital networks

- A.** Definitions and terms. As used in this Section, the following terms shall have the meaning indicated:
1. "Accredited Investor" shall have the meaning provided in A.A.C. R14-4-126.
 2. "Listed Company" shall mean a business that maintains a listing on the Network.
 3. "Net Earnings" shall mean the after-tax earnings of a company or issuer that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles.
 4. "Network" shall mean a computer matching or listing service or system that facilitates the matching of businesses in need of capital to investors by enhancing the flow of information between businesses and investors.
 5. "Affiliate" shall mean a person or entity that directly, or indirectly through 1 or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.
 6. "Operator" shall mean the person or entity that owns, operates, sponsors or conducts a Network and any employees. An Operator shall not include a dealer, an affiliate of a dealer, an investment adviser, or an affiliate of an investment adviser.
 7. "Securities Act" shall mean the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
- B.** No Network or Operator shall be required to register as a dealer or salesman pursuant to Article 9 of the Securities Act, nor shall a Network or Operator be required to be licensed or file a notice as an investment adviser or investment adviser representative pursuant to Article 4 of the Arizona Investment Management Act (A.R.S. Title 44, Chapter 13), provided that the Network or Operator complies with the following conditions:
1. The Network or Operator shall not provide advice about any particular opportunities or ventures or make recommendations concerning any Listed Company.
 2. The Network or Operator shall not receive compensation other than flat fees to cover administrative costs and such fees will not be made contingent upon the outcome or completion of any securities transaction resulting from a listing on the Network.
 3. The Network or Operator shall not participate in any negotiations between investors and any Listed Company.
 4. The Network or Operator shall not directly or indirectly assist any investor or Listed Company with any transaction.
 5. The Network or Operator shall not handle funds or securities involved in any transaction.
 6. The Network or Operator shall not hold themselves out as providing any securities-related services other than a listing or matching service.
 7. The Network or Operator shall list only companies that the Network or Operator reasonably believes do not fall within the disqualification provisions listed in subsection (C).
 8. The Network or Operator shall limit access to information on Listed Companies to only those persons or enti-

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- ties that the Network or Operator reasonably believes are Accredited Investors;
2. Information contained on the Network shall not be organized or presented in a manner that suggests that the Network recommends the purchase, holding or sale of any security;
 10. Any information contained on the Network concerning any Listed Company will be readily available in documents from the Listed Company or its agents and, where required by law, will be filed with the appropriate state and federal authorities;
 11. A Listed Company shall have a specific business plan or purpose, but its plan or purpose shall not be to engage in a merger or acquisition with an unidentified company or companies, or other entity or person;
 12. Listed Company offerings may not exceed an aggregate of \$5,000,000 in any consecutive 12 month period;
 13. Operator or Network officials, participants, and employees with direct or indirect operating or supervisory control over Network operations will not participate as investors in any Listed Company unless such participation is in compliance with securities laws and such participation is disclosed on the Network.
- C. This exemption is not available for any Network, Operator, or Listed Company if such entity or predecessor or any of its officers, directors, 10% stockholders, promoters or any selling agents of the securities to be offered, or any officer, director or partner of such selling agent:
1. Has filed a registration statement which is the subject of a registration stop order entered pursuant to any state's securities law within 5 years of the proposed offering;
 2. Has been convicted within 5 years of the proposed offering of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;
3. Is subject to any state administrative enforcement order or judgment entered by that state's securities administrator within 5 years of the proposed offering, or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within 5 years of the proposed offering;
 4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the proposed offer, purchase or sale of securities;
 5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within 5 years of the proposed offering.
- D. The Commission, at its discretion, may waive any disqualification caused by subsection (C).
- E. Any disqualification caused by subsection (C) shall cease to exist if any of the following occurs:
1. The basis for the disqualification has been removed by the jurisdiction creating it;
 2. The jurisdiction in which the disqualifying event occurs issues a written waiver of the disqualification;
 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- F. The Commission may by order revoke or suspend this exemption if it finds that the operation of the Network or Operator would work or tend to work a fraud or deceit upon investors or potential investors.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE.

1. Sections Affected

Article 3
R20-5-301
R20-5-301
R20-5-302
R20-5-302
R20-5-303
R20-5-303
R20-5-304
R20-5-304
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R20-5-306
R20-5-306
R20-5-307
R20-5-307
R20-5-308
R20-5-308
R20-5-309

Rulemaking Action

Amend
Repeal
New Section
Repeal
New Section
Repeal
New Section
Repeal
New Section
Repeal
New Section
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New Section
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Repeal

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R20-5-309	New Section
R20-5-310	Repeal
R20-5-310	New Section
R20-5-311	Repeal
R20-5-311	New Section
R20-5-312	Repeal
R20-5-312	New Section
R20-5-313	New Section
R20-5-314	Repeal
R20-5-314	New Section
R20-5-315	Repeal
R20-5-315	New Section
R20-5-316	Repeal
R20-5-316	New Section
R20-5-317	Repeal
R20-5-317	New Section
R20-5-318	Repeal
R20-5-318	New Section
R20-5-319	New Section
R20-5-320	New Section
R20-5-321	New Section
R20-5-322	New Section
R20-5-323	New Section
R20-5-324	New Section
R20-5-325	New Section
R20-5-326	New Section
R20-5-327	New Section
R20-5-328	New Section
R20-5-329	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing Statute: A.R.S. § 23-523(1)

Implementing Statute: A.R.S. § § 23-522, 23-522.02, 23-526, 23-527, 23-529, 23-530, 23-532, 23-534

3. **Effective date of the rules:**

The rules will be effective when the Notice of Final Rulemaking is filed with the Secretary of State.

4. **A list of previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 2695, October 3, 1997

Notice of Proposed Rulemaking: 4 A.A.R. 815, April 3, 1998

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Laura McGrory, Assistant Chief Counsel

Address: Industrial Commission of Arizona
800 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

6. **An explanation of the rule, including the agency's reason for initiating the rule:**

In response to the requirement of A.R.S. § 41-1072 et seq. to enact licensing time-frame rules, the Industrial Commission initiated rulemaking to provide time-frames for the licensing of private employment agents. The Industrial Commission also recognized that, having last been amended in 1981, R20-5-301 et seq. needed updating in style, language and form. Therefore, the entire Article was rewritten to update the style, language and form of the Article and to articulate more clearly the requirements and process to obtain, renew, or maintain a private employment agent license. Last, in response to concerns articulated by the Arizona Employment Advisory Council and members of the industry, the Industrial Commission added new Sections dealing with computation and payment of fees to a private employment agent, resolution of fee disputes, and advertising.

7. **A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

The proposed rule changes do not diminish a previous grant of authority of a political subdivision of this state.

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8. The summary of the economic, small business, and consumer impact statement:

Persons who wish to obtain a private employment agent license, licensed private employment agents, and members of the public using the services of licensed private employment agents are the focus of the economic, small business, and consumer impact statement.

Industrial Commission does not anticipate or foresee any measurable economic impact on small businesses or consumers as a result of the adopted changes that concern rules of procedure governing the application or renewal process.

As a result of R-20-5-323 (limitation of fee to 50% when an applicant terminates employment within 30 days without cause) the Commission believes that there will be a minimal (less than \$1,000) to moderate (\$1,000 to \$10,000) economic impact upon employment agents providing applicant-paid referral services.

As a result of R20-5-326(1) (requirement that agents disclose in an advertisement that the business is or provides an applicant-paid service), the Industrial Commission believes that there will be a significant economic impact to employment agents providing applicant-paid referral services business. The impact will be the result of increased advertising costs (\$1,000 to \$10,000) and loss of the referral portion of an agent's business (at a cost in excess of \$10,000). The Industrial Commission recognizes, however, that applicant-paid referral services are in decline because of market forces. Over the past 15 years, applicant-paid referral services have declined from approximately 90 services to approximately 7. The economy is good and jobs are readily available. Workers are finding their own jobs and are not willing to pay a fee to an employment agent to find a job. In the future, as market forces change and jobs become less plentiful, members of the public may be more willingly to pay an employment agent a fee to find a job.

The Industrial Commission will incur minimal costs (less than \$1,000) associated with reprinting its forms and printing the rules in a booklet form for distribution to the public. The Industrial Commission will handle the additional costs with existing funds. The Industrial Commission benefits from having time-frames and specific criteria pertaining to the licensing of private employment agents clearly articulated in the rules. As a result of the adopted rules, the Industrial Commission will process applications more efficiently and quickly. The Industrial Commission will not require additional staffing to implement the adopted rules.

The adopted rules attempt to protect the public and level the "playing field" between applicants (consumers) and private employment agents by 1) requiring that contracts between consumers and agents contain clear and unambiguous terms, 2) defining the circumstances under which a job order and referral can be made, 3) ensuring that fees charged by a private employment agent are reasonable, 4) providing a forum for the arbitration of fee disputes, and 5) prohibiting advertising that is false or misleading. The adopted rules also benefit the public by permitting an applicant to terminate employment without cause within 30 days without having to pay a full fee. The Commission believes that an applicant should not be locked into paying a full fee for a position that the consumer leaves within 30 days, even if the reason for leaving the job is without cause. The public also benefits from R20-5-326 which addresses advertising. Specifically, the public benefits from knowing "up front" that the business, whose advertisement they are interested in, is an applicant-paid service.

Overall, the Industrial Commission believes that the benefits of the adopted rules outweigh the costs.

9. A description of the changes between the proposed rule, including supplemental notices, and final rules:

The Industrial Commission made the following changes to the proposed rules. Language that has been added after the proposed rules were published are indicated by bold text. Language that has been stricken from the proposed rules are indicated by bold strike outs. The ICA's reason for the change is indicated in italics.

R20-5-301. Adoption Clause Definitions

"Advertising" means any material, means, or medium used by a licensed employment agent for solicitation or promotion of business. This includes business cards, notices, or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It also includes referral cards, invoices, letterheads, or other forms if the forms are used in combination with solicitation or and promotion of business.

The ICA made this change in response to a suggestion from GRRC staff. The change improves the clarity of the rule.

"Business manager" means a person, firm, corporation, or association whose services to a talent or model are limited to giving financial advice or managing the business affairs of the talent ~~artist~~ or model.

The ICA made this change in response to a suggestion from GRRC staff. The change improves the clarity of the rule.

"Career counseling service" means a person, firm, corporation, or association that provides career assistance, career management, job search assistance, evaluation or planning, and information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or and other information to enable an individual to secure employment, but does not include the following:

c. A person, firm, ~~or~~ corporation, or association that prepares ~~engages solely in the preparation of~~ resumes and documents in support of resumes without providing career counseling and referral services;

The ICA made the grammatical changes in these subsections in response to comments from GRRC staff and to improve the clarity of the rule. The ICA made the change in subsection (c) in response to a comment that resume preparation services also prepare cover letters and follow-up letters.

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f. A person engaged in the practice of social work, counseling, or marital and family therapy as those terms are defined in ~~A.R.S. § 23-3251~~ A.R.S. § 32-3251, who provides career ~~counseling and guidance and counseling~~ as part of the social work, counseling, marital or ~~and~~ family therapy;

The ICA made these changes to correct a typographical error and to improve the clarity of the rule.

"Career counselor" means an individual working in a career counseling service to provide career assistance, career management, job search assistance, career evaluation or planning, or ~~and~~ information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or ~~and~~ other information to enable an individual to secure employment. An employee of a career counseling service whose duties are primarily clerical in nature is not a career counselor.

The ICA made these changes in response to a suggestion from GRRC staff. The changes improve the clarity of the rule.

"License" means a document issued by the Commission that authorizes a person to conduct ~~the~~ business as of an employment agent.

The ICA made these changes in response to a suggestion from GRRC staff. The changes improve the clarity of the rule.

"Model" means an individual who is employed to display, ~~by wearing~~, clothes or other merchandise.

The ICA made this change in response to a suggestion from GRRC staff. The changes improve the clarity of the rule.

"Referral service" means a person, firm, corporation, or association that refers an applicant to employment upon receipt of a bona fide job order.

The ICA added this definition in response to a comment that the words should be defined.

"Personal manager" means a person, firm, corporation, or association whose services are limited to counseling or ~~and~~ advising a talent or model in connection with the talent's or model's professional career.

The ICA made this change in response to a comment from GRRC staff.

"Talent ~~and/or~~ or modeling agency or agent" means a person, firm, corporation, or association that provides employment information to a talent or model for the purpose of securing an engagement for the talent or model.

The ICA made this change in response to a suggestion from GRRC staff.

R20-5-303. License Application Procedure Forms Prescribed by the Commission

The Commission shall make the following forms which contain the information listed available upon request.

1. Initial application for employment agent license:
 - a. Name of candidate, including other names used by the candidate;
 - b. Personal identifying information of candidate;
 - c. Residence, length of residence, and place of prior residency of candidate;
 - d. Employment history of candidate, including work history and experience as an employment agent;
 - e. Personal references of candidate;
 - f. Felony and misdemeanor convictions of candidate;
 - ~~g. Financial disclosure information of candidate;~~
 - g. Name, ~~trade name~~ trade name, divisions and all other names under which candidate intends to do business;
 - h. Proposed location of all business sites;
 - i. Organizational structure of business;
 - j. Names and addresses of all persons or firms having a financial interest in the business and the percentage of financial interest of each person's or firm's share;
 - k. Job classifications of proposed clientele;
 - l. Fee rates and schedules of business;
 - m. Names and addresses of all persons who will be involved in the management and supervision of the business at all locations of the business;
 - n. Information relating to Workers' Compensation Insurance; and

- ~~o. Request for education records; and~~
- ~~p. Request for military discharge records, college transcripts and military discharge records.~~
2. Business financial statement:
 - a. Name of candidate;
 - b. Business address of candidate; and
 - c. Disclosure of financial information of candidate that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person, including information relating to assets and liabilities of candidate;
3. Personal financial statement:
 - a. Name of candidate or managing agent;
 - b. Home address of candidate or managing agent; and
 - c. Disclosure of personal financial information of candidate or managing agent that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person, including information relating to assets and liabilities of candidate, annual income and expenditures of candidate, names of all persons having an interest in the assets of the candidate, list and present fair market value of real estate, stock and bonds in which the candidate has an interest, insurance maintained by the candidate, and whether the candidate is a guarantor for any debt.

4. Supplemental application:

- a. Name and phone number of managing agent, including other names used by the managing agent;
- b. Name of private employment agent with whom the managing agent intends to associate;
- c. Personal identifying information of managing agent;
- d. Residence, length of residence, and place of prior residency of managing agent;
- e. Employment history of managing agent, including work history and experience as an employment agent;
- f. Personal references of managing agent;
- g. Felony and misdemeanor convictions of managing agent;

~~h. Financial disclosure information of managing agent; and~~

~~h. Request for education records; and~~

~~i. Request for military discharge records, college transcripts and military discharge records.~~

5. Renewal application for employment agent license:

- a. Name, address, and telephone number of licensee seeking renewal;
- b. Position of licensee with employment agent business;
- c. Name, trade name, including abbreviations of name or trade name, of licensee seeking renewal;
- d. Current legal business status of licensee seeking renewal...

The ICA made these changes in response to a comment that the financial reporting requirements were too broad. The change ties the request for financial information to the criteria used by the Industrial Commission to approve or deny an employment agent license. The change of the word "tradename" was in response to a comment from the Secretary of State. This change is made throughout the text of the rule package although not specifically set forth in this paragraph. The ICA also changed "college transcript" to "education record" to clarify that a college degree is not required. Rather, the ICA seeks information about any education received by an applicant. Last, the ICA added the word "business" in subsection 5(d) to clarify that the ICA requires that the legal status of the business be disclosed.

R20-5-305. Change of Agency Status Filing Requirements for Initial Application for Employment Agent License

B. If a candidate intends to do business as a sole proprietorship, then the candidate shall include the following information with the ~~candidate's~~ application for an initial employment agent license: ...

4. ~~Education records College transcripts~~ of the candidate and all managing agents:...

6. A \$5000 surety bond or a \$1000 cash deposit. ~~If a cash deposit is submitted, the candidate that shall increase the deposit be increased to a \$5000 cash deposit~~ before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;

7. A copy of the registration of the ~~proposed~~ trade name through the Arizona Secretary of State;

C. If a candidate intends to do business as a partnership, ~~then~~ the candidate shall include the following information with the ~~candidate's~~ application for an initial employment agent license: ...

2. A personal financial statement ~~completed~~ for each partner and prepared by each partner; ...

4. ~~Education records College transcripts~~ of all partners and all managing agents: ...

6. A \$5000 surety bond or a \$1000 cash deposit. ~~If a cash deposit is submitted, the candidate that shall increase the deposit be increased to a \$5000 cash deposit~~ before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;

7. A copy of the registration of the ~~proposed~~ trade name through the Arizona Secretary of State;...

D. If the candidate intends to do business as a corporation, ~~then~~ an officer of the corporation shall complete and sign the initial application for employment agent license and shall include the following information in the candidate's application:

~~3. A personal financial statement of the officer completing the application for employment agent license;~~

~~3.4. Education records College transcripts~~ of all managing agents and the officer completing the application for employment agent license;...

5. A \$5000 surety bond or a \$1000 cash deposit. ~~If a cash deposit is submitted, the candidate that shall increase the deposit be increased to a \$5000 cash deposit~~ before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;...

11. A copy of the registration of the ~~proposed~~ trade name through the Arizona Secretary of State.

The ICA changed "college transcript" to "education records" to clarify that a college degree is not required. Rather, the ICA seeks information about any education received by an applicant. The ICA eliminated the requirement for personal financial disclosure by an officer of corporation because a corporation is a separate, legal entity with financial information of its own that is unrelated to the personal financial information of an officer of the corporation. Miscellaneous grammatical changes were made in response to suggestions from GRRC staff.

R20-5-306. Contracts, Receipts, Forms Written Examination

A. Except as otherwise provided in this Article, all individuals required by A.R.S. § 23-526 and this Article to take the written examination described in A.R.S. § 23-526(B), shall complete the examination within 12 months ~~before prior to the filing of an~~

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initial application for employment agent license with the Department. The Commission shall not grant an employment agent license unless all individuals required by A.R.S. § 23-526 and this Article to take the written examination have answered correctly 80% of the questions asked in the examination.

The ICA made these changes in response to suggestions made by GRRC staff. The changes improve the clarity of the rule.

R20-5-307. Applicant Paid Fees Renewal of Employment Agent License

A. A licensee can apply for renewal of an ~~its~~ employment agent license under A.R.S. § 23-528 by filing a completed renewal application with the Department before the date of the expiration of the license. In addition to the information described in R20-5-303(5), a licensee shall include the following in its renewal application:

1. ~~Renewal licensee fee described in A.R.S. § 23-528(B)~~ the renewal license fee described in A.R.S. § 23-528(B).

B. The Commission shall deem an employment agent license expired if a renewal application is not filed with the Department before the expiration date of the employment agent license. If an employment agent license expires, the formerly licensed agent ~~wishes to continue to act as a private employment agent, then the formerly licensed agent~~ shall file a new application which meets the requirements of this Article for an initial application.

The ICA made these changes to eliminate an unnecessary subsection and in response to suggestions from GRRC staff. The changes improve the clarity of the rule.

R20-5-308. Employer Paid Fees Substantive Review of Initial or Renewal Application for Employment Agent License

A. When a completed initial or renewal application for employment agent license is filed, the Department shall investigate the candidate or licensee to verify whether the information contained in and submitted with the initial or renewal application for employment agent license is accurate and complies with the requirements of A.R.S. § 23-521 et seq. and this Article, and reasonable. The Department shall also conduct an investigation of the candidate or licensee, in accordance with A.R.S. § 23-523(3) and § 23-524, to determine whether the candidate or licensee has a history or record of any of the following:...

The ICA made these changes in response to a suggestion from GRRC staff. Although A.R.S. § 23-530 requires the Department to determine "reasonableness" of fees, the use of the word "reasonable" in this subsection is confusing. Therefore, to improve the clarity of the rule, the word "reasonable" was replaced with specific reference to the statutes and this Article.

R20-5-310. Determining Right of Referral and Placement Payment of Initial License Fee Under A.R.S. § 23-528

C. If a candidate fails to pay the license fee required under A.R.S. § 23-528 within the time provided in this Section, the Commission shall deem the order approving an initial application for employment agent license ~~to be expired~~. In that event, the Commission shall require the candidate to file a new application if the candidate still seeks ~~licensing to be licensed~~ as an employment agent.

The ICA made these changes in response to a suggestion from GRRC staff. The changes improve the clarity of the rule.

R20-5-312. Records Hearing Rights and Procedures

B. Roles of Chair and Chief Counsel.

2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission. ~~Upon and upon~~ direction of the Chair of the Commission and ~~shall issue~~ on behalf of the Commission, the Chief Counsel shall issue all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Department.

The ICA made these changes in response to suggestions from GRRC staff.

R20-5-313. Renumbered Decision Upon Hearing by Commission

A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-309(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

B. ~~A The~~ decision of the Commission to revoke or suspend a license shall be based upon the grounds in A.R.S. § 23-529 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

C. A decision of the Commission under R20-5-322(D) shall be based upon the grounds in R20-5-322(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

D. Within 30 days after the Commission renders ~~After~~ a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.

E.B. ~~A The~~ Commission decision is final unless a candidate or licensee requests review under R20-5-314 within 30 days from the date the written decision is issued.

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The ICA added the language in subsection (C) in response to comments received from GRRC staff. This language relates to the right of a licensee to request a hearing protesting an order disapproving an amended schedule of fees and clarifies that the Commission will consider the criteria set forth in R20-5-322.

R20-5-314. Job Orders-Request for Review

B. A request for review shall be based upon 1 or more of the following grounds which have materially affected the rights of a party:

1. Irregularities in the hearing proceedings or any order or abuse of discretion depriving whereby the party seeking review was deprived of a fair hearing:

The ICA made this change in response to a comment from GRRC staff.

R20-5-316. Talent and Modeling Agencies-Reissuance of Employment Agent License After Suspension under A.R.S. § 23-529(D)

A. An A formerly licensed employment agent, whose license has been suspended, may file a request with the Commission after the Commission's decision suspending the license is deemed final asking that the license be reissued. The request for reissuance shall be filed with the Department and shall include the following:

The ICA made this change in response to a comment by GRRC staff that the proposed language of the rule may be confusing. The change improves the clarity of the rule.

R20-5-317. Employment Agencies-Acting without a License-Amendment of Employment Agent License

F. Cancellation of the bond by the surety.

1. The Department shall provide written notice to a licensee within 5 days of a notice of cancellation of the bond by the surety. A licensee shall submit to the Department a new bond or cash deposit to the Department at least 10 days before the existing bond is canceled...

3. The repeated failure to maintain a surety bond or cash deposit at all times constitutes gross negligence and cause for disciplinary action under A.R.S. § 23-529.

The ICA added the word "repeated" in response to a comment that an agent may inadvertently fail to maintain a surety bond or cash deposit. The Commission agreed that a one-time inadvertent failure to maintain a surety bond or cash deposit should not constitute cause for revocation. The ICA made grammatical changes in subsection (F)(1) in response to a suggestion from GRRC staff.

R20-5-319. Form and Requirements of Contracts

F. If a term of a contract entered into by a talent and modeling agent or applicant provides that the applicant's compensation remuneration is paid directly to the talent or modeling agent by a company, the talent or modeling agent shall pay the applicant the compensation salary received, less the talent or modeling agent's fee, no later than 7 days after receiving the compensation remuneration from the company.

The ICA made these changes in response from comments from GRRC staff. The change improves the clarity of the rule.

R20-5-322. Submission and Approval of Fee Schedule and Receipts by Commission

D. Except as provided in R20-5-308, the The Department shall review a licensee's amended schedule of fees within 30 days from the date of filing to determine whether the schedule complies with this Article and shall issue a written order approving or disapproving the schedule of fees. The Commission shall deem an order approving or disapproving the schedule of fees final unless a licensee requests a hearing within 30 days after the order is issued. R20-5-312, R20-5-313, and R20-5-314 shall govern hearings held under this subsection.

The ICA made this change in response to a comment from GRRC staff and to clarify the remedy available to a licensee upon receipt of an order disapproving an amended schedule of fees.

R20-5-323. Fees for Services

C. Under Pursuant to A.R.S. § 23-530 and subject to subsection (D), a career counselor may either charge an applicant a fee after the applicant receives satisfactory services from the career counselor, or require payment in advance of services, if provided the career counselor provides a prompt refund refunds to the applicant when satisfactory services are not provided to the applicant.

D. Computation of a fee by a licensee other than a talent and modeling agent or career counselor.

1. A licensee shall not charge a full fee but may charge an adjusted temporary fee to an applicant who starts work but before the expiration of 90 days stops work for the following reasons:...

2. A licensee shall not charge more than 30% 50% of the scheduled fee to an applicant who fails to report to work without good reason or voluntarily terminates employment without just cause within 30 days of starting employment.

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E. For purposes of computing a fee, termination "for cause" or "with fault" means a lawful or legal termination "for cause" or "with fault" under the laws of this State which ~~may can~~ include termination for the following reasons:

1. Unexcused absence from work;
2. Intentional violation of employer work rules; or ~~and~~
3. Incapacitation or inability to perform work duties due to alcohol, drugs, or illegal substances or agents.

F. For purposes of computing a fee, an applicant has "just cause" for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld from the applicant and those conditions, if known, would ~~have~~ cause the applicant to ~~have~~ reasonably refuse ~~refused~~ employment.

G. Refund of a fee.

2. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if the licensee fails to ~~satisfactorily~~ provide or deliver the services or products agreed upon in the contract between the licensee and applicant.

The ICA made miscellaneous grammatical changes in response to suggestions from GRRC staff. The ICA also changed the fee restriction in subsection (D) to minimize the impact on applicant-paid referral services and eliminated the reference to "satisfactory" in this Section in response to public comments and comments from GRRC.

R20-5-324. Fee Disputes

B. Answer.

3. The Department shall ~~mail serve~~ the applicant a copy of the licensee's answer within 10 days of receipt of the answer...

C. Investigation and determination by Department.

3. The Department shall ~~mail serve~~ a copy of its findings and order upon the applicant and licensee ~~by mail~~ at the last known address of the applicant and licensee.

4. The Department shall deem its findings and order final unless within 30 days from the date the findings and order is mailed ~~served~~, the applicant or licensee, or an authorized representative of the applicant or licensee, requests a hearing before the Commission.

The ICA changed these changes in response to suggestions from GRRC staff.

R-20-5-326. Advertising

In addition to the provisions of A.R.S. § 23-534, the Department shall deem advertising false, misleading, or misrepresentative if the advertisement fails to conform to the following requirements:

1. An advertisement shall carry the name under which the agency is licensed to do business and shall state that the business is an applicant-paid service or includes an applicant-paid service. An agent may abbreviate in an advertisement "applicant-paid service" as "app-paid svc". An agent may abbreviate in an advertisement the name under which the agency is licensed to do business provided that an agent does not abbreviate its licensed name by using initials only unless initials are a part of the name under which the agent is licensed:

The ICA added language permitting the abbreviation of words to minimize the economic impact of the Section. A hyphen was added between the words "applicant" and "paid" in response to a suggestion from GRRC staff.

5. An advertisement for a single job order shall not be duplicated in the same newspaper or news media. Employment positions shall not be advertised on the same day under 2 or more different job descriptions:

The ICA deleted this language in response to comments that duplicative advertising promotes more business. The ICA agrees and does not believe that undue public harm will result from permitting employment agents from advertising in multiple sections of a newspaper.

Throughout the rule package, the ICA changed the word "timeframe" to "time-frame", "sale/purchase" to "sale or purchase", "worker's" to "workers", "talent and modeling agent" to "talent or modeling agent", "pursuant to" to "under", and changed numbers written in text to Arabic numbers. The ICA also made miscellaneous punctuation changes and changed the placement of the section symbol ("§") to add a space between the section symbol and the applicable cite. The ICA changed the symbol "e.g." to "for example," [R20-5-317(E)(4)] and "agent(s)" to "agent" [R20-5-317(G)]. These changes were made in response to comments received from the Secretary of State and GRRC staff.

10. Summary of principal comments and agency response to them.

R20-5-301. Definitions

Principle Comments: The following words should be clarified or defined: "Preparation of resumes", "referral services", "copy", "incompetence", "dishonesty", and "gross negligence".

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ICA Response: The ICA agrees that "preparation of resumes" should include the preparation of documents in support of a resume. The adopted rules include that phrase in R20-5-301.

The ICA agrees that "referral services" needs to be defined in the rules. Therefore, the adopted rules include a definition in R20-5-301.

The ICA disagrees that the word "copy" needs to be defined. The word has a commonly understood meaning. Likewise, the ICA believes that the words "incompetence", "dishonesty", and "gross negligence" do not require definition. These words also have commonly understood meanings that do not require definition.

R20-5-303. Forms and R20-5-305 Filing Requirements

Principle Comments: The forms and filing requirements request personal and business financial information. Financial information is irrelevant to the issue of whether the ICA should grant an employment agent license.

Agency Response. The ICA disagrees that financial information is irrelevant to the issue of whether it should grant an employment agent license. There are several reasons justifying the receipt of this information. First, the ICA is given the statutory authority to order any measure necessary to protect the public from fraud, misrepresentation, or other unauthorized acts of an employment agent. Some licensed employment agents (talent agents) hold money belonging to an applicant. There are no rules or statutes governing how the agents are required to handle the money belonging to an applicant (e.g. trust account requirements). Recognizing that some agents hold money belonging to another, the ICA wants to ensure financial responsibility of the agent. If financial responsibility of an agent is ensured, the ICA believes that the agent is less likely to misappropriate or convert the funds belonging to another.

Second, in fulfillment of its statutory obligation to protect the public, the ICA will deny an application for employment agent license if an applicant has a history of financial instability or irregularity, including a history of misappropriation, conversion, irregular withholding or accounting of money belonging to another. To draw these conclusions, the ICA needs to evaluate financial data for the person and business applying for a license.

While the ICA believes that it needs financial information to evaluate an applicant, the ICA does agree that the proposed rules required the disclosure of too much financial information. The adopted rules tailor the request for financial information to information demonstrating financial instability, irregularity, misappropriation, conversion, or irregular withholding or accounting of money belonging to another.

Principle Comment: The forms and filing requirements request college transcripts. This information is irrelevant since the rules do not require a minimum level of education, experience, or training for persons applying for an employment agent license.

Agency Response: The ICA disagrees. The ICA does not have the statutory authority to impose specific education, experience or training requirements for employment agents. Further, the ICA believes that by imposing specific educational, experience, or training requirements, otherwise qualified individuals may be precluded from applying for a employment agent license. The ICA believes that the ultimate question is whether a person can competently discharge the duties of an employment agent. Under the rules, it does not matter what education, experience or skill qualifies the person to act as an employment agent. The criteria is that the person can competently discharge the duties of an employment agent. The ICA changed the request for college transcripts to a request for education records. Requesting education information gives the ICA data from which the ICA can evaluate whether a person has the ability to discharge the duties of a licensed employment agent. Additionally, receipt of education records enables the ICA to verify other information provided by an applicant (e.g. accounting of time and whereabouts of applicant).

Principle Comment: The forms and filing requirements request military discharge records. This information is irrelevant.

Agency Response: The ICA disagrees. The reasons supporting a dishonorable military may be relevant to the criteria listed in R20-5-309(B). Additionally, receipt of a military discharge record enables the ICA to verify other information provided by an applicant (e.g. accounting of time and whereabouts of applicant).

R20-5-304. Time-frames

Principle Comment: If workdays are used to count the days for processing an application for an initial license, the time-frame is too long. If calendar days are used, the time-frame is satisfactory.

Agency Response: The adopted rules use calendar days to calculate licensing time-frames for initial applications.

Principle Comment: The time-frame for processing a renewal application is too long.

Agency Response: The ICA disagrees. The rule gives the ICA 60 days (overall time-frame) to review and process a renewal application. Within that 60 days, both the Labor Department and Employment Advisory Council must act. If the Employment Advisory Council recommends denial of the renewal application, then the 60 days includes action from the Commission. In actuality, however, the time-frame for processing a renewal application does not affect or impact a licensed employment agent's ability to conduct business. The adopted rules include a section stating that if a timely renewal application is filed, the validity of the existing license continues until the license is renewed or a order of the Commission denying renewal becomes final.

R20-5-308. Substantive Review of Initial or Renewal Application for Employment Agent License and R20-5-309. Decision by the Commission on an Initial or Renewal Application for Employment Agent License

Principle Comment: Unless the ICA intends to impose education, experience and skill requirements for employment agents, the ICA should not include as a criteria for the licensing of a private employment agents the education, experience, and skill of a candidate or licensed employment agent. The ICA should impose education, experience and skill requirements.

Agency Response: The Industrial Commission is given broad authority under A.R.S. §§ 23-523 and 23-529(A) to ensure that private employment agents are competent to discharge the duties of an employment agent. The ultimate criteria is whether a person can competently discharge the duties of an employment agent. Under the adopted rules, it does not matter what education, experience, or skill qualifies the person to act as an employment agent. The criteria is that the person can competently discharge the duties of an employment agent. Further, the ICA believes that by imposing specific education, experience, or training requirements, otherwise qualified individuals may be precluded from applying for a employment agent license.

The Commission believes that the criteria set forth in these Sections is necessary to ensure that public is provided employment services by individuals who will not cause the public harm by fraud, misrepresentation, or other unauthorized acts.

R20-5-317. Amendment of Employment Agent License

Principle Comment: Subsection (E)(3) states that failure to maintain a surety bond constitutes gross negligence and cause for revocation. A one-time, inadvertent failure to obtain the bond should not be cause for revocation.

Agency Response: The ICA agrees. The adopted rules state that repeated failure to maintain a surety bond or cash deposit constitutes gross negligence and is cause for revocation.

R20-5-322. Submission and Approval of Fee Schedule and Receipts

Principle Comment: The ICA should not be approving the fees that are charged by a licensed employment agent.

Agency Response: The ICA disagrees. Arizona Revised Statutes § 23-530(A) states that every applicant for a license shall file with the ICA a schedule of the fees and charges established by the employment agent. Paragraph (B) of A.R.S. § 23-530 states that the ICA shall not issue or renew a license unless the fees are reasonable. The adopted rule establishes criteria by which the ICA determines whether the fees charged by an employment agent are reasonable.

R20-5-323. Fees for Services

Principle Comment: Subsection (D)(2) should not impose a restriction on the ability to collect a full fee when an applicant terminates employment without cause within 30 days of accepting employment. The employment agent has expended time and resources finding employment for the applicant. The agent is entitled to full compensation even if the applicant leaves the employment within 30 days. Most applicants who terminate employment within 30 days simply do not want to pay the fee.

Agency Response: The ICA disagrees. The industry practice of referral services is to charge a fee for the successful placement of an applicant. The fee is generally calculated as a percentage of the annual salary to be received by the applicant (e.g. 10% of annual salary over \$10,000). Presently, an employer has the right to collect the full fee when the applicant terminates employment without cause. Consequently, and for example, if an applicant leaves a \$10,000 job within 5 days "without just cause", the applicant is still responsible to pay the employment agent the \$1,000 fee. The ICA believes that this kind of fee arrangement is unfair to the protected public. The ICA believes that applicants should be given the opportunity to leave a job for any reason without fear of incurring a full fee. Further, the ICA believes that an employment agent has the ability to refill a position left by an applicant. If an employment agent refills a position, the employment agent potentially receives a windfall. Recognizing, however, the impact that the limitation has on referral services, the adopted rule decreases the limitation from the proposed rule. The adopted rule permits an employment agent to recover 50% of the fee agreed to between an applicant and an employment agent.

Principle Comment: The agency should include insubordination, theft, and embezzlement as cause for termination in R20-5-323(E).

Agency Response: The ICA disagrees. The rule refers to, and includes as cause to terminate, other lawful or legal termination's under the laws of Arizona. It is unnecessary to list all the possible reasons a person may be lawfully or legally terminated.

Principle Comment: Subsections C and G address refunds if satisfactory services are not received from a career counselor. The word "satisfactory" is too arbitrary. Further, under the language of the rule a company could be liable for a refund any time a client is dissatisfied with services.

Agency Response: The ICA agrees that the word "satisfactory" may be too arbitrary and deleted the word from Subsection (G). However, the ICA disagrees that an applicant should be restricted in bringing a fee dispute before the ICA. In fairness to an applicant and to ensure fair practice dealings between an employment agent and an applicant, an applicant is entitled to claim a refund when the applicant believes that services or products have not been delivered.

No other comments were received regarding R20-5-323. The Industrial Commission is given the statutory authority to determine whether fees imposed by licensed employment agents are reasonable. The Industrial Commission believes that this Section provides specific additional criteria of reasonableness.

R20-5-326. Advertising

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Principle Comment: Employment agents should not be required to disclose in advertising that the business is an applicant-paid service. Referral services will lose business because applicants will simply not call the business if the applicant knows the business is an applicant-paid service. The agents want the opportunity to sell their service to applicants. Further, including information in an advertisement that the business is an applicant-paid service will cost additional money.

Agency Response: The ICA disagrees. The public has the right to know that the business is an applicant-paid service. Requiring this disclosure in an advertisement reduces deceptive business practices. To minimize the financial impact of the additional advertising costs, however, the adopted rules permit an employment agent to abbreviate their name and the fact that the business is or includes an applicant-paid service.

Principle Comment: Employment agents should have the ability to advertise a position under 2 or more job descriptions. It helps business.

Agency Response: The ICA agrees. The adopted rules do not impose a restriction on duplicative advertising.

Principle Comment: The rules should prohibit the following:

1. A company from falsely advertising the number of years the company has been in business;
2. A company that has changed its ownership from suggesting that it has been operating continuously under the same name;
3. A company with 1 office stating that they have offices throughout the country if they do not (e.g. franchise owner has 1 office, but advertises that offices maintained throughout the country without disclosing that other offices are owned by other franchise owners);
4. Advertising "No Professional Fees";
5. Advertising inside or personal contacts; and
6. Advertising that a percentage of the better positions are never advertised.

Agency Response: The ICA agrees that all forms of false and misleading advertisements are unlawful. The ICA does not believe that it can list every possible misleading or false advertisement in R20-5-326. The list contained in R20-5-326 represent areas of most concern. The ICA, nevertheless, has statutory authority to address other forms of false or misleading representations under A.R.S. §§ 23-533 and 23-534. Further, subsection 12 of Section 326 prohibits advertising access to an "unpublished" or "hidden job market". The ICA believes that this subsection addresses the commentators' concern about advertising "inside or personal contacts" or that the better positions are never advertised.

Principle Comment: A company operating under a dba should disclose in an advertisement who the owner is and that the company is a dba.

Agency Response: The ICA disagrees that this information needs to be disclosed in an advertisement. The information is contained in the files of the ICA and can be accessed by the public through a public records request. Further, the ICA questions whether knowing that a company is a dba is something that the public needs to know "up-front" when dealing with an employment agent. Under these circumstances, the ICA does not believe it can justify the imposition of additional advertising costs for this information.

R20-5-328. Talent and Modeling Agencies

Principle Comment: Talent agents should not be permitted to act as casting agents. Agents who are members of the Screen Actor's Guild are not permitted under Guild rules to act as a casting agents. Non-unionized talent agents should not be permitted to act as casting agents.

Agency Response: The ICA disagrees. In most instances, casting services are employer-paid services. The ICA does not have jurisdiction over employment services where the employer pays the fee. If, however, a casting agent charges a fee to an applicant, then the adopted rules require the casting agent to obtain an employment agent license from the ICA. The ICA believes that it does not have authority to prohibit an employment agent from providing services as a casting agent, if the casting service is an employer-paid business.

11. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:

None.

12. Incorporation by reference and their location in the rules:

None.

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:

No.

14. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 3. RULES AND REGULATIONS GOVERNING
PRIVATE EMPLOYMENT AGENCIES AGENCIES**

Section

- R20-5-301. Adoption Clause Definitions
- R20-5-302. Definitions Computation of Time
- R20-5-303. License Application Procedure Forms Prescribed by the Commission
- R20-5-304. Duration of License Time-frames for Processing Initial and Renewal Applications for Employment Agent License by Commission
- R20-5-305. Change of Agency Status Filing Requirements for Initial Application for Employment Agent License
- R20-5-306. Contracts, Receipts, Forms Written Examination
- R20-5-307. Applicant Paid Fees Renewal of Employment Agent License
- R20-5-308. Employer Paid Fees Substantive Review of Initial or Renewal Application for Employment Agent License
- R20-5-309. Copies and Receipts Decision by the Commission on an Initial or Renewal Application for Employment Agent License
- R20-5-310. Determining Right of Referral and Placement Payment of Initial License Fee Under A.R.S. § 23-528
- R20-5-311. Determining Right of Referral and Placement Payment of Initial License Fee Under A.R.S. § 23-528
- R20-5-312. Records Hearing Rights and Procedures
- R20-5-313. Renumbered Decision Upon Hearing by Commission
- R20-5-314. Job Orders Request for Review
- R20-5-315. Labor Contractors Procedure for Investigation and Disposition of Complaints Filed Under A.R.S. § 23-529
- R20-5-316. Talent and Modeling Agencies Reissuance of Employment Agent License After Suspension under A.R.S. § 23-529(D)
- R20-5-317. Employment Agencies Acting without a License Amendment of Employment Agent License
- R20-5-318. Effect of Rules and Regulations on Existing Licensees Form of Books, Registers and Records
- R20-5-319. Form and Requirements of Contracts
- R20-5-320. Bona Fide Job Order
- R20-5-321. Bona Fide Job Referral
- R20-5-322. Submission and Approval of Fee Schedule and Receipts by Commission
- R20-5-323. Fees for Services
- R20-5-324. Fee Disputes
- R20-5-325. Determining Right of Referral and Placement
- R20-5-326. Advertising
- R20-5-327. Labor Contractors
- R20-5-328. Talent and Modeling Agencies
- R20-5-329. Employment Agencies Acting Without a License

**ARTICLE 3. RULES AND REGULATIONS GOVERNING
PRIVATE EMPLOYMENT AGENCIES AGENCIES**

R20-5-301. Adoption Clause Definitions

A. The following rules and regulations governing private employment agencies have been promulgated by the Employment Advisory Council and approved, fixed and ordered by the Industrial Commission of Arizona pursuant to the provisions of A.R.S. § 23-523, as necessary rules to carry out the provisions of Article II, Chapter III, Title 23, Arizona

Revised Statutes. In connection with the adoption of these rules the Commission takes cognizance of other statutes of the state of Arizona related to the subject, including but not limited to the following:

1. A.R.S. §§ 41-1001 through 41-1008, Administrative Procedure.
2. A.R.S. §§ 12-901 through 12-914, Judicial Review of Administrative Decisions.
3. A.R.S. §§ 44-1441 through 44-1446, Trade Names.
4. A.R.S. §§ 10-104, Corporate Name.
5. A.R.S. §§ 44-1481, Fraudulent Advertising.

B. All present rules and regulations governing Private Employment Agencies are repealed as of the effective date of these rules and regulations. Copy of approved rules and regulations were filed with the Secretary of State on November 5, 1970.

In addition to the definitions provided in A.R.S. § 23-521, the following definitions apply to this Article:

"Advertising" means any material, means, or medium used by a licensed employment agent for solicitation or promotion of business. This includes business cards, notices, or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It also includes referral cards, invoices, letterheads, or other forms if the forms are used in combination with solicitation or promotion of business.

"Applicant" means any individual, including a talent or model, seeking the services of a licensed employment agent.

"Applicant-paid fee" means a sum of money or value that is collected from an applicant for receiving employment services from a licensed employment agent.

"Bona fide job order" means an employer's or company's written or oral authorization to a licensed employment agent to refer an applicant to the employer.

"Business manager" means a person, firm, corporation, or association whose services to a talent or model are limited to giving financial advice or managing the business affairs of the talent or model.

"Candidate" means a person, firm, corporation, or association, applying for an employment agent license.

"Career counseling service" means a person, firm, corporation, or association that provides career assistance, career management, job search assistance, evaluation or planning, information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or other information to enable an individual to secure employment, but does not include the following:

- a. A provider of job referral services;
- b. A provider of vocational rehabilitation as defined in A.R.S. § 23-501;
- c. A person, firm, corporation, or association that prepares resumes and documents in support of resumes without providing career counseling or referral services;
- d. A public or private educational institution;
- e. A psychologist licensed or certified in this state who provides career guidance and counseling to patients as part of the psychologist's practice;
- f. A person engaged in the practice of social work, counseling, or marital and family therapy as those terms are defined in A.R.S. § 32-3251, who pro-

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- vides career guidance and counseling as part of the social work, counseling, marital or family therapy;
- g. A physician licensed in this state who provides career guidance and counseling to patients as part of the physician's practice;
 - h. A priest, minister, rabbi or other clergy who provides career guidance and counseling as part of the clergy's practice; and
 - i. An attorney licensed in this state who provides career guidance and counseling as part of the attorney's practice.

"Career counselor" means an individual working in a career counseling service to provide career assistance, career management, job search assistance, career evaluation or planning, or information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or other information to enable an individual to secure employment. An employee of a career counseling service whose duties are primarily clerical in nature is not a career counselor.

"Commission" means the Industrial Commission of Arizona.

"Company" means a business that obtains applicants from a licensed talent and/or modeling agency.

"Complaint" means an oral or written communication made to the Department or to the Commission by any person alleging improper conduct by a licensed employment agent.

"Council" means the Arizona Employment Advisory Council.

"Department" means the Labor Department of the Industrial Commission of Arizona.

"Director" means the Director of the Industrial Commission of Arizona.

"Electronic media service" means a business that lists applications, resumes, or job openings on a computerized network or system.

"Engagement" means the employment of an individual as an actor, entertainer, model, or performer in an entertainment enterprise.

"Entertainment enterprise" means theater, motion pictures, radio, television, opera, ballet, modeling, circus, vaudeville or variety act, or other performance- or exhibition-oriented business.

"License" means a document issued by the Commission that authorizes a person to conduct business as an employment agent.

"Labor contractor" means an employer as defined under A.R.S. Title 23, Chapter 6, who leases or provides temporary workers to a customer or client.

"Licensed employment agent" or "licensee" means an employment agent defined in A.R.S. § 23-521(A) who holds a valid license issued by the Commission under A.R.S. § 23-521 et seq.

"Managing agent" means a person, firm, corporation, or association that is designated by a licensed employment agent to be in charge of the operation of an employment agency or any of its branches or divisions.

"Model" means an individual who is employed to display, by wearing, clothes or other merchandise.

"Personal manager" means a person, firm, corporation, or association whose services are limited to counseling or advising a talent or model in connection with the talent's or model's professional career.

"Placement counselor" means an individual working in a placement counseling service to assist an applicant to obtain employment by providing career counseling services, referral services, or registry services. An employee of a licensed employment agent whose duties are primarily clerical in nature is not a placement counselor.

"Placement counseling service" means a person, firm, corporation, or association that provides career counseling services, referral services, or registry services.

"Referral service" means a person, firm, corporation, or association that refers an applicant to employment upon receipt of a bona fide job order.

"Secretary" means the Director of the Industrial Commission of Arizona Labor Department who serves as the Secretary for the Employment Advisory Council.

"Talent" means an individual rendering performing services in an entertainment enterprise, including musicians.

"Talent or modeling agency or agent" means a person, firm, corporation, or association that provides employment information to a talent or model for the purpose of securing an engagement for the talent or model.

R20-5-302. Definitions Computation of Time

In these rules and regulations, unless the context otherwise requires, the following words and terms shall have the following meanings:

- 1. "Commission" means the Industrial Commission of Arizona.
- 2. "Council" means the Arizona Employment Advisory Council.
- 3. "Director" and "Secretary" mean the Director of the Industrial Commission of Arizona who serves as secretary of the Employment Advisory Council.
- 4. "License" means a license issued by the Industrial Commission of Arizona to conduct the business of an employment agent as defined in A.R.S. § 23-521.
- 5. "Licensee" means and includes an individual, sole proprietorship, firm, partnership, association or corporation holding a valid license that has not been revoked or suspended.
- 6. "Applicant for a license" means a person who submits an application for a license.
- 7. "Applicant" means a person seeking employment through the services of a licensee.
- 8. "Employer" means a person, sole proprietorship, partnership, corporation, association or other legal entity requesting the services of a licensee or employing an applicant.
- 9. "Department" means the Labor Department of the Industrial Commission of Arizona.
- 10. "Counselor" or "placement counselor" means and includes, but is not limited to, a person employed by a licensee whose duties are to counsel, advise, solicit, classify, screen, contact, interview, test or refer either an applicant or employer in any manner whatsoever but shall not include any employee of a licensee whose duties are primarily clerical in nature and do not normally include the duties performed by a "counselor."
- 11. "Responsible managing agent" means a person or persons who, in addition to the licensee, may be designated by the licensee to be in charge of the operation of the licensee's agency or any of its branches or divisions.

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- 12. "Bona fide job order" means an employee or his agent's written or oral authorization to a licensee which authorizes the licensee to refer an applicant to the employer.
- 13. "Fee paid" or "employer paid fee" means that the employer has agreed to pay the entire fee directly to the agency.
- 14. "Applicant paid fee" means that all or any portion of the fee shall be the responsibility of the applicant.
- 15. "Complaint" means an oral or written communication made to the Department or the Commission by an applicant or other person alleging improper conduct by a licensee.

A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.

B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

R20-5-303. License Application Procedure Forms Prescribed by the Commission

A. Application. Any person, sole proprietorship, firm, partnership, association or corporation desiring to engage in the business or operation of an employment agency as defined in A.R.S. § 23-251 shall file with the Department an application for license on forms prescribed and furnished by the Commission. Said application for a license shall be completed in full and made under oath.

B. Information to accompany application for license

- 1. All applications for a license shall be accompanied by the personal history of the applicant for a license, partners of a partnership, and the responsible managing agents. The history shall state whether or not said individuals have ever been licensed as employment agents in this or any other state or jurisdiction. The history shall also set forth any experience said individuals have had in the employment agency business. The history shall further state whether or not said individuals have had any adversely adjudicated complaints filed against them in this or any other state or jurisdiction while acting as a licensee or employee of a licensee in this state or any other state and shall set forth in full the nature of any such complaint and the disposition thereof.
- 2. The application shall set forth the name and tradename under which licensee proposes to do business.
- 3. If the applicant for a license does not intend to be licensed as a corporation, he shall submit a letter from the Secretary of State stating that any proposed tradename does not violate any name protected by A.R.S. §§44-1441 through 44-1446.
- 4. If the applicant for a license is a corporation, the application shall be accompanied by a certified Resolution of said corporation authorizing the application for a license and naming the individuals authorized to act on behalf of the corporation and a copy of the Articles of Incorporation as filed with the Corporation Commission.
- 5. The applicant for a license, partners of a partnership, and the responsible managing agents shall furnish the Department with references from former employers and

other persons, preferably residents of the state who have known them for 2 years or more.

C. Surety bond. Applications for a license shall be accompanied by a surety bond in the amount of five thousand dollars or the applicant for a license may comply with the provisions of A.R.S. § 23-527 by posting a cash deposit. The cash deposit shall initially be in the amount of \$1,000.00, but prior to the issuance of the license, said cash deposit must be increased to \$5,000.00 or replaced by a surety bond in that amount. If a license is approved and granted, the cash deposit or surety bond shall at all times be maintained at \$5,000.00.

D. Investigation. Upon the filing of an application for a license, the Department shall undertake an investigation to determine if the applicant qualifies for a license pursuant to the provisions of A.R.S. §§ 23-526 and 23-527. The management and ownership of the proposed employment agency shall be investigated and such investigation shall include, but not be limited to, the following matters:

- 1. Moral character
- 2. Business integrity
- 3. Character of active management
- 4. Financial responsibility
- 5. Location of place of business
- 6. Proposed name of agency.

The Department shall complete the investigation within 90 days unless circumstances require a longer time.

E. Prior to the initial issuance of an employment agency license, the responsible managing agent or other persons determined by the Commission to be responsible for the operation of the agency shall take a written examination prepared by the Director with the assistance of the Advisory Council. The examination shall include but not be limited to the following:

- 1. Laws pertaining to employment agents
- 2. Rules and regulations pertaining to employment agents
- 3. Laws pertaining to employment discrimination
- 4. Other pertinent labor laws

The minimum passing grade for this examination is 80%. Any person who has passed the examination shall not be required to re-take such examination in connection with a new license application for a period of five years.

F. Notice of qualification. If, after investigation by the Department and recommendation by the Council, the Industrial Commission approves an employment agency license, the applicant for such license shall be notified of such approval and, upon receipt of the license fee required by A.R.S. A§ 23-528, the license shall be issued. A license fee which is not paid within 90 days of such notice shall require a new application if the applicant for a license wishes to act as an employment agency.

G. Notice of rejection. If the Commission determines, after consideration of the recommendation of the Council and the report of investigation from the Department, that the applicant for a license does not qualify for such license, it shall notify the applicant for a license of this fact by registered mail sent to his last known address. The rejected applicant for a license shall have 20 days from the date of mailing of the Commission's order denying a license in which to apply to the Industrial Commission of Arizona for a rehearing of its order. Should the Commission deny the rehearing, the aggrieved party is referred to his rights under A.R.S. §§12-901 to 12-914.

The Commission shall make the following forms, which contain the information listed, available upon request.

- 1. Initial application for employment agent license;

- a. Name of candidate, including other names used by the candidate;
- b. Personal identifying information of candidate;
- c. Residence, length of residence, and place of prior residency of candidate;
- d. Employment history of candidate, including work history and experience as an employment agent;
- e. Personal references of candidate;
- f. Felony and misdemeanor convictions of candidate;
- g. Name, trade name, divisions and all other names under which candidate intends to do business;
- h. Proposed location of all business sites;
- i. Organizational structure of business;
- j. Names and addresses of all persons or firms having a financial interest in the business and the percentage of financial interest of each person's or firm's share;
- k. Job classifications of proposed clientele;
- l. Fee rates and schedules of business;
- m. Names and addresses of all persons who will be involved in the management and supervision of the business at all locations of the business;
- n. Information relating to Workers' Compensation Insurance; and
- o. Request for education records; and
- p. Request for military discharge records.
- 2. Business financial statement:
 - a. Name of candidate;
 - b. Business address of candidate; and
 - c. Disclosure of financial information of candidate that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person.
- 3. Personal financial statement:
 - a. Name of candidate or managing agent;
 - b. Home address of candidate or managing agent; and
 - c. Disclosure of personal financial information of candidate or managing agent that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person.
- 4. Supplemental application:
 - a. Name and telephone number of managing agent, including other names used by the managing agent;
 - b. Name of private employment agent with whom the managing agent intends to associate;
 - c. Personal identifying information of managing agent;
 - d. Residence, length of residence, and place of prior residency of managing agent;
 - e. Employment history of managing agent, including work history and experience as an employment agent;
 - f. Personal references of managing agent;
 - g. Felony and misdemeanor convictions of managing agent; and
 - h. Request for education records; and
 - i. Request for military discharge records.
- 5. Renewal application for employment agent license:
 - a. Name, address, and telephone number of licensee seeking renewal;
 - b. Position of licensee with employment agent business;

- c. Name, trade name, including abbreviations of name or trade name, of licensee seeking renewal;
- d. Current legal business status of licensee seeking renewal;
- e. Name of managing agent;
- f. Type of business to be renewed;
- g. Address of all business sites of licensee;
- h. Name of all divisions operated by licensee;
- i. Names and addresses of other businesses operated by licensee;
- j. Number of placement counselors employed by licensee during preceding year;
- k. Schedule of fees and rules implemented by licensee and any changes in the schedule of fees and rules during the preceding year;
- l. List of changes made to forms required by A.R.S. § 23-521 et seq. and this Article in the preceding year;
- m. Information pertaining to complaints received in the preceding year by the licensee; and
- n. Information pertaining to compliance with the Arizona workers' compensation laws.

R20-5-304. Duration of License-Time frames for Processing Initial and Renewal Applications for Employment Agent License by Commission

- A. Period issued. All licenses to operate private employment agencies shall be valid for one year from the date of issue and may be subject to annual renewal renewed for a like period of time upon payment of the fees provided in A.R.S. § 23-528.
- B. Renewal. The Department shall notify each licensee in writing of the expiration of the license at least forty-five days prior to the date of expiration. Renewal applications, accompanied by the license fee, must be submitted to the Department at least ten days prior to the date of expiration of the license. Any licensee who is delinquent in filing a renewal application prior to the expiration date must file a new application and comply with the provisions of R20-5-303.
- C. At the time of application for renewal, the Department's records regarding the licensee's operation shall be reviewed, including but not limited to records of complaints and other inspections conducted by the Department. The Department shall present its findings to the Council. If the Council deems that it would not be in the public interest to renew the license, the Council may recommend to the Director and request that the Commission issue an order to the licensee involved to show cause why the license should not be renewed upon good cause in accordance with the provisions of A.R.S. § 23-529.
- D. Revocation. In addition to the procedure set forth in R20-5-304(B), the Council may at any time recommend to the Director that the Commission order any licensee to show cause why his license should not be revoked pursuant to the provisions of A.R.S. § 23-529.
- A. Administrative completeness review.
 - 1. The Department shall review an initial or renewal application for employment agent license within 15 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-521 et seq. and this Article. The Department shall inform the candidate or licensee by written notice whether the application is deemed complete or deficient within the time-frame provided in this subsection. The Department shall deem the application withdrawn if the candidate or licensee fails to file a complete application within 45 days of being notified by the Department that

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the application is incomplete or deficient. A candidate or licensee can request an extension of time to file a complete application by filing a written request with the Department before the Department deems the application withdrawn. For good cause shown, the Department may grant an extension of time by serving written notice of the extension upon the candidate or licensee.

B. Substantive review.

1. Initial applications. Within 120 days after an initial application is deemed complete, the Commission shall determine whether the initial application for employment agent license meets the substantive criteria of A.R.S. § 23-521 et seq. and this Article and shall issue a written order granting or denying the license.
2. Renewal applications. Within 60 days after a renewal application is deemed complete, the Commission shall determine whether the renewal application for employment agent license meets the substantive criteria of A.R.S. § 23-521 et seq. and this Article and shall issue a written order refusing to renew the license or grant the renewal by issuing a new license.

C. Overall Review.

1. Initial application. Within 135 days after receipt of an initial application for an employment agent license, the Commission shall issue an order denying or granting the initial license.
2. Renewal application. Within 75 days after receipt of a renewal application for an employment agent license, the Commission shall issue an order refusing to renew the license or grant the renewal by issuing a new license.

R20-5-305. Change of Agency Status Filing Requirements for Initial Application for Employment Agent License

- A.** Change of licensee name. Licensees desiring to change the name or tradename of their agency must give the Department 30 days advance written notice. In addition, the licensee must obtain an amendment or rider to the surety bond showing the new name (not applicable to tradename changes). The bond rider must be obtained from the surety and submitted to the Department before the new name can be finalized. A change in the licensee's name does not require a new license but only an amendment to the current license. Upon completion of the above requirements, the licensee shall return his current license to the Department for such amendment and reissuance.
- B.** Change of agency location. Licensees desiring to change the location of their place of business must give the Department 30 days advance written notice. Such change does not require a new license but an amendment to the current license. The licensee shall return his current license to the Department for such amendment.
- C.** Transfer of license. A license is not transferable. A sale by a licensee of his business requires an application for an issuance of a new license. A change of legal entity or form of doing business does not require a new license but only an amendment to the current license. Licensees shall give the Department 30 days advance written notice of such change and return the current license to the Department for such amendment and reissuance.
- D.** Relinquishment of license. Should the licensee intend to discontinue the business of an employment agency, he must give the Department 30 days advance written notice. Upon receipt of such notice, the Department shall conduct an investigation into the matters relating to the licensee's operation to, but not limited to, the payment of any annual fees and the settlement of any pending claims.

If, after such investigation, the Department determines that the licensee's operations are in order, it shall notify the bond surety of its concurrence in the cancellation of the bond. If the licensee has made a cash deposit, the Department shall instruct the State Treasurer to return such cash deposit. The licensee shall return his current license to the Department for cancellation.

- E.** Cancellation of the bond by the surety. Upon receipt of a notice of cancellation of the bond by the surety, the Department will advise the licensee in writing of such cancellation. A new bond or cash deposit must be received at least ten days prior to the effective date of cancellation of the existing bond. If a new bond or cash deposit is not received within ten days prior to the cancellation of the existing bond, the Department shall advise the licensee in writing that he may not act as an employment agent effective the date of the cancellation of the bond until such date as a new bond or cash deposit is received by the Department. Failure to maintain the surety bond or cash deposit at all times shall be considered gross negligence and cause for disciplinary action by the Commission as stipulated in A.R.S. § 23-529.

- F.** Disassociation of responsible managing agent. Should any responsible managing agent become disassociated with a licensee for any reason, the licensee shall notify the Department of this fact within ten days and shall at that time designate another responsible managing agent unless there was more than one responsible managing agent and the remaining managing agent(s) will be managing the agency without replacement of the disassociating responsible managing agent. A new responsible managing agent may be designated at any time. Such newly designated responsible managing agent shall fully qualify including having passed the written examination provided for in R20-5-303(E) within 30 days of appointment.

A. Initial application for employment agent license.

1. A candidate shall complete an initial application on forms approved by the Commission.
2. A candidate shall file an application for an employment agent license with the Department. An application is considered filed when it is received at the office of the Department and stamped by the Department with the date of filing.
3. An application shall be typewritten or written in legible text.
4. The individual completing the application shall sign and date the application and have the signature notarized.
5. The individual completing and signing the application shall verify that the information contained in and submitted with the application is true and correct.

B. If a candidate intends to do business as a sole proprietorship, then the candidate shall include the following information with the application for an initial employment agent license:

1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
2. A personal financial statement completed by the candidate;
3. A business financial statement completed by the candidate;
4. Education records of the candidate and all managing agents;
5. Military discharge records of the candidate and all managing agents;
6. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the

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deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;

7. A copy of the registration of the trade name through the Arizona Secretary of State;
8. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
9. A copy of the franchise agreement, if the proposed business is a franchise; and
10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business.

C. If a candidate intends to do business as a partnership, the candidate shall include the following information with the application for an initial employment agent license:

1. A supplemental application completed by all partners and managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
2. A personal financial statement for each partner and prepared by each partner;
3. A business financial statement completed by all partners;
4. Education records of all partners and all managing agents;
5. Military discharge records of all partners and all managing agents;
6. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
7. A copy of the registration of the trade name through the Arizona Secretary of State;
8. A copy of the partnership agreement;
9. A copy of the franchise agreement, if the proposed business is a franchise;
10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business;
11. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;

D. If the candidate intends to do business as a corporation, an officer of the corporation shall complete and sign the initial application for employment agent license and shall include the following information in the candidate's application:

1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
2. A business financial statement of the corporation;
3. Education records of all managing agents and the officer completing the application for employment agent license;
4. Military discharge records of all managing agents and the officer completing the application;
5. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;

6. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;

7. Certified resolution of the corporation authorizing the application for an employment agent license and naming the individuals authorized to act on behalf of the corporation;

8. A copy of the candidate's articles of incorporation on file with the Arizona Corporation Commission;

9. A copy of the franchise agreement, if the proposed business is a franchise;

10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business; and

11. A copy of the registration of the trade name through the Arizona Secretary of State.

E. A candidate shall include with an application for initial employment agent license a schedule of fees and charges as described in A.R.S. § 23-530(A).

F. A candidate shall include with an application for initial employment agent license a copy of all rules and regulations as described in A.R.S. § 23-530(A).

G. A candidate shall include with an application for initial employment agent license sample forms of the following documents:

1. Receipts;
2. Contracts;
3. Job order forms; and
4. Other documents that relate in any manner to the fee that is charged an applicant.

R20-5-306. Contracts, Receipts, Forms-Written Examination

A. Review. All receipts, contracts and other forms related to fees used by a licensee in the conduct of his business to which an applicant may become a party shall be submitted to the Department for review and approval. The Department shall review the foregoing within 30 days from the date of filing.

B. Contract terms and provisions. All contracts shall set forth in clear and unambiguous terms the respective rights and obligations of the applicants and the licensee and shall include the following provisions:

1. A schedule of applicable fees approved by the Commission;
2. A clear statement defining when the applicant becomes obligated for the payment of a fee;
3. A clear statement of the conditions precedent for an adjustment of a fee.

C. Definitions. If the following terms or provisions are used in a contract with an applicant, they shall be deemed to have the following meanings:

1. Acceptance—A position is accepted when the applicant agrees to begin work at an agreed remuneration.
2. Permanent placement—All placements shall be considered permanent unless the contract expressly states otherwise.
3. Change from permanent to temporary placement—Permanent employment shall be considered temporary when within 90 days after employment commences the employment is terminated through "no fault" of the applicant, or the employment is voluntarily terminated by the applicant with "just cause".
4. Fee schedule—A percentage or set fee on file with an approved by the Commission, for all fees to be charged the applicant, both temporary and permanent placement.

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5. ~~Failure to report—If an applicant accepts a position and fails to report for work, the applicant may be charged the full fee except when extreme circumstances prevent the applicant from reporting and the applicant notifies the licensee of this fact prior to the starting date.~~
6. ~~Discharge for fault—An employee may be considered at fault for the following reasons:~~
 - a. ~~Willful absence from duty~~
 - b. ~~Having been convicted, subsequent to his employment, of crime or misdemeanor reflecting upon his employment~~
 - c. ~~Not being of good moral character~~
 - d. ~~Being drunk or disorderly on the job~~
 - e. ~~Violating written company policies or rules~~
 - f. ~~Misrepresenting or withholding, without the knowledge of the licensee, any information regarding health, education, work experience, personal history, responsibility of training, if such information would have caused the employer to refuse employment.~~
7. ~~Just cause—An employee has "just cause" for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld from the applicant and said conditions would have, if known at the time of acceptance, caused the applicant to have reasonably refused employment. Such conditions of employment shall include, but not be limited to:~~
 - a. ~~Probationary or trial periods~~
 - b. ~~Bankruptcy or cessation of operation by the employer~~
 - c. ~~Failure to pay wages when due~~
 - d. ~~Conditions at the place of employment which are injurious to the employee's health or morals~~
 - e. ~~Change in remuneration or assignment to a different type or lower status than was agreed to when the position was accepted~~
 - f. ~~Lack of ability to perform assigned duties provided the applicant's abilities have not been misrepresented.~~
- D. ~~Required statements. All contracts or agreements between the licensee and applicant shall contain the following exact statement:~~

~~This agency is licensed, bonded and operates under the law of the state of Arizona and is regulated by the Industrial Commission of Arizona.~~
- E. ~~The following wording shall appear immediately before the signature of the applicant:~~

~~I hereby acknowledge receipt of a copy of this contract.~~
- F. ~~Copy of contract to applicant. A copy of the original or duplicate original of each contract, promissory note, or other form to which the applicant becomes a party with the licensee shall be given to the applicant by the licensee executing such contract or document.~~
- A. Except as otherwise provided in this Article, all individuals required by A.R.S. § 23-526 and this Article to take the written examination described in A.R.S. § 23-526(B), shall complete the examination within 12 months before filing an initial application for employment agent license with the Department. The Commission shall not grant an employment agent license unless all individuals required by A.R.S. § 23-526 and this Article to take the written examination have answered correctly 80% of the questions asked in the examination.
- B. The Department shall give notice of the time and place of the written examination upon request.

- C. Examination results are valid for a period of 12 months. If after 12 months, the individual taking the examination does not use the results in support of an application for an employment agent license, then that individual shall be required to retake the examination.

R20-5-307. Applicant Paid Fees—Renewal of Employment Agent License

- A. ~~When applicant fee is earned. A placement fee is earned and may be charged an applicant by a licensee only when one of the following exists:~~
 1. ~~When the applicant accepts employment as a result of a referral by a licensee. The referral must be based on a bona fide job order.~~
 2. ~~When the applicant fails to secure or does not accept the position to which the applicant was originally referred but accepts another position with that employer or with any employer to whom the first employer refers the applicant within six months as a result, directly or indirectly, of the original referral by the licensee.~~
 3. ~~When the applicant informs another person of the availability of the position described in the referral by the licensee and said person accepts the position within six months after the date of the referral.~~
- B. ~~Basis for fee charges. All placement fees shall be computed on the basis of permanent employment unless the contract expressly states otherwise. However, if the employee is discharged without fault or voluntarily terminates with just cause within a time determined by the contract, a temporary fee will be charged.~~
- C. ~~Registration Fees. No agency shall charge a registration fee which has not been approved by the Commission.~~
- D. ~~Death. Should a licensee be instrumental in placing an applicant in employment and should the applicant die prior to the completion of the period of time required for permanent employment, the licensee shall be entitled to an adjusted temporary fee.~~
- E. ~~Amount of permanent fee. For permanent employment as defined by these regulations, an employment agency may charge placement fees to applicants not to exceed those filed with the Commission. An agency may charge less than the maximum schedule of fees.~~
- F. ~~In case of temporary employment, a placement fee may be charged not to exceed a percentage of all gross earnings during the time of employment. Such fee shall be filed with the Commission and shall not exceed the amount of fee charged for the same permanent position.~~
- G. ~~Refunds of fee~~
 1. ~~Any money, fee or valuable consideration received by a licensee in excess of the amount filed by each agency with the Commission shall be refunded without delay upon request of the person who paid the placement fee.~~
 2. ~~If an applicant shall apply and not obtain employment at the place to which he is sent by licensee, or, after being accepted by an employer, the applicant is not permitted by said employer to commence work through no fault of the applicant, the whole amount of any placement fee paid by the applicant shall be refunded without delay upon request of the applicant.~~
 3. ~~If a refund is found to be due an applicant such amount shall be refunded applicant without delay.~~
- H. ~~Complaints, conflicts and procedure for settlement and disposition of disputes involving a refund of a fee~~
 1. ~~Filing complaint. Any applicant having a complaint involving a refund of a fee against any licensee may file with the Department on a form to be provided by the~~

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Department a written complaint, verified under oath, stating the name and address of the agency complained against, and fully detailing the nature of the complaint. Such complaint shall state the nature of the dispute with some particularity. Any complaint hereunder shall be filed within 60 days of the date on which the event giving rise to the complaint occurred.

2. Copy of complaint to licensee. Upon filing of a complaint with the Department, a copy of the complaint shall be sent by certified mail to the licensee complained against and the licensee shall reply to the complaint within ten days of the mailing of said complaint. The reply shall include copies of all written receipts and agreements which the licensee has in his possession concerning the particular complaint. If requested by the complainant, the Department may provide a copy of the licensee's response to the complainant.
3. Determination by the Department. Upon conclusion of its investigation, the Department shall make a determination of the complaint. The Department may refer the complaint to the Council for its recommendation. The Department shall notify both the complainant and the licensee of its determination.
4. Request for hearing. Either party may file a written request for a hearing before the Commission within 15 days from the receipt of notice of the Department's determination:
 - a. Parties may appear in their own behalf or by counsel. When an attorney represents a party, he shall advise the Department of his name, address and telephone number.
 - b. All witnesses at a hearing shall testify under oath or affirmation.
 - c. The Department may issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material and take depositions as deemed necessary.
 - d. The proceedings at hearings may be stenographically reported.
 - e. Within 30 days after the conclusion of a hearing the Commission shall render a decision in writing. Findings of fact and conclusions of law shall be separately stated. Copies of the Commission's findings and order shall be sent by certified mail to the parties.
6. A party aggrieved by a decision of the Commission may seek review of the decision pursuant to the provisions of Title 12, Chapter 7, Article 6:
 - A. A licensee can apply for renewal of an employment agent license under A.R.S. § 23-528 by filing a completed renewal application with the Department before the date of the expiration of the license. In addition to the information described in R20-5-303(5), a licensee shall include the renewal license fee in A.R.S. § 23-528(B).
 - B. The Commission shall deem an employment agent license expired if a renewal application is not filed with the Department before the expiration date of the employment agent license. If an employment agent license expires, the formerly licensed agent shall file a new application which meets the requirements of this Article for an initial application.
 - C. If a timely and complete renewal application is filed with the Department under this Article, the Commission shall consider the existing employment agent license valid, subject to compliance with A.R.S. § 23-531 et seq. and this Article,

until a new license is issued or an order of the Commission refusing to renew becomes final.

R20-5-308. Employer-Paid Fees Substantive Review of Initial or Renewal Application for Employment Agent License

- A. An employment agency which operates exclusively on an employer-paid fee basis shall include a statement to this effect in its application for a license and subsequent applications for renewal thereof.
- B. If a complaint is filed by an employer against a licensee, such complaint shall be investigated in accordance with R20-5-311.
- C. If an applicant accepts a position to which he was referred by an agency with the understanding that the fee or any portion of the fee was to be paid by the employer, and he leaves that position for any reason, he shall not be liable to the agency for that part of the placement fee understood to be paid by the employer, notwithstanding contractual provisions to the contrary:
 - A. When a completed initial or renewal application for employment agent license is filed, the Department shall investigate the candidate or licensee to verify whether the information contained in and submitted with the initial or renewal application for employment agent license is accurate and complies with the requirements of A.R.S. § 23-521 et seq. and this Article. The Department shall also conduct an investigation of the candidate or licensee, in accordance with A.R.S. § 23-523(3) and § 23-524, to determine whether the candidate or licensee has a history or record of any of the following:
 1. Dishonesty;
 2. Financial instability or irregularity, including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
 3. Incompetence;
 4. Gross negligence;
 5. Bribery;
 6. Willful or repeated disregard of the requirements of Title 23, Chapter 3, Article 2;
 7. Source of injury or loss to the public; or
 8. Lack of education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
 - B. The Department shall verify that all individuals who are required by this Article to take the written examination required by A.R.S. § 23-526(B) have received a passing score of 80%.
 - C. The Department shall present the findings of its investigation described in subsections (A) and (B) to the Council. The Council shall make its recommendation regarding an initial or renewal application for employment agent license based on the information submitted by the candidate or licensee and the investigation of the Department. Under the authority of A.R.S. § 23-522.02, the Council shall recommend that an application for an initial or renewal license be denied if the Council finds 1 or more of the following conditions:
 1. Material misrepresentation or fraud in the initial or renewal application;
 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;

4. The candidate, licensee, or managing agent has a history or record of incompetence;
 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
 6. The candidate, licensee, or managing agent has a history or record of bribery;
 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of Title 23, Chapter 3, Article 2;
 8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- D.** The Department shall present the recommendation of the Council pertaining to an initial application to the Commission. The Department shall also present to the Commission the recommendation of the Council that denies a renewal application. If the Council recommends that a renewal application be granted, the Department is not required to present the recommendation to the Commission. In that event, the Department shall notify the licensee of the approval by sending the licensee a renewed license.

R20-5-309. Copies and Receipts Decision by the Commission on an Initial or Renewal Application for Employment Agent License

- A.** Receipts for funds received. For any fee received from an applicant by a licensee, the licensee shall give to said applicant a receipt upon a form pursuant to A.R.S. § 23-531(A).
- B.** Applicant's copy of receipt. All receipts shall be made and numbered in original and duplicate. The original shall be given to the applicant paying the fee and the duplicate shall be on file at the employment agency.
- A.** In addition to the requirements imposed by A.R.S. § 23-521 et seq., the Commission shall consider the following before granting or denying an initial or renewal employment agent license:
1. The information submitted by the candidate or licensee.
 2. The findings of the investigation by the Department, and
 3. The recommendation of the Council.
- B.** Under the authority in A.R.S. § 23-523 and 23-524, the Commission shall deny an application for an initial or renewal license if the Commission finds 1 or more of the following conditions:
1. Material misrepresentation or fraud in the initial or renewal application;
 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
 4. The candidate, licensee, or managing agent has a history or record of incompetence;
 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
 6. The candidate, licensee, or managing agent has a history or record of bribery;
 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of Title 23, Chapter 3, Article 2;

8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- C.** The Commission shall issue written findings and an order granting or denying an employment agent license.
- D.** If the Commission denies an employment agent license, the Department shall serve a copy of the Commission's written findings and order upon the candidate or licensee within 5 days of the date the Commission issues its findings and order.
- E.** If the Commission grants a renewal application for employment agent license, then the Department shall provide the licensee with a renewed license within 5 days of the date the Commission issues its written findings and order.
- F.** If the Commission grants an initial application for employment agent license, the Department shall provide the candidate with written notification of that approval. The written notification shall include a statement that the license approved by the Commission will be issued upon receipt of the annual fee required under A.R.S. § 23-528 and that the approval will expire within 45 days unless the fee is paid.

R20-5-310. Determining Right of Referral and Placement Payment of Initial License Fee Under A.R.S. § 23-528

- A.** Right of referral. As between two licensees, the licensee entitled to the placement fee is the licensee who first completes a bona fide referral. However, if after the expiration of 30 days from the date of the referral by a licensee to an employer, no active interest or consideration is being given said applicant by the employer through the original referral, and a second licensee, who has an oral or written authorization from the employer, refers the same applicant to the same employer and the applicant secures employment as a result of the second referral, then the second licensee is entitled to the fee.
- B.** A bona fide referral. A referral is bona fide when all of the following are completed:
1. When the agency informs the applicant of the name and location of the employer, including the name of the individual to whom the applicant will report for an interview;
 2. When the applicant is informed of the job specifications and salary range;
 3. When the employer is informed of the applicant's name and qualifications;
 4. When both the employer and the applicant agree, either directly or by authorized arrangement of the referring agency, to meet for an interview;
- A.** The Commission shall not issue an initial employment agent license granted under this Article until the candidate pays the license fee required under A.R.S. § 23-528.
- B.** A candidate shall pay the license fee required under A.R.S. § 23-528 within 45 days of the date the Commission grants the initial application for employment agent license.
- C.** If a candidate fails to pay the license fee required under A.R.S. § 23-528 within the time provided in this Section, the Commission shall deem the order approving an initial application for employment agent license expired. In that event, the Commission shall require the candidate to file a new application if the candidate still seeks licensing as an employment agent.

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R20-5-311. Complaints Regarding Misconduct by a Licensee and Procedures for Investigation and Disposition—Right to Request a Hearing

- A.** Filing complaint. Any person having a complaint alleging misconduct by a licensee may file with the Department on a form provided by the Department a written complaint, verified under oath, stating the name and address of the licensee and fully detailing the nature of the complaint. Any complaint hereunder shall be filed within 90 days of the date on which the event giving rise to the complaint occurred.
- B.** Investigation by the Department. Upon receipt of the complaint, the Department shall conduct a thorough investigation of the facts relative to the alleged misconduct. If, upon completion of its investigation, the Commission determines that there is sufficient evidence to warrant a hearing, the Commission shall direct the secretary of the Commission to file a verified complaint pursuant to A.R.S. § 23-529 and to prepare a notice of hearing.
- C.** Notice of hearing. The notice of hearing shall be served by registered or certified mail upon the licensee, together with a copy of the complaint setting forth the charge or charges to be heard. The notice shall contain the time and place of the hearing to be held not less than 30 and not more than 40 days after the mailing of the notice. A licensee may file a written response with the Commission within 20 days of the date of receipt of the complaint.
- D.** Conduct of hearing. A licensee may appear personally or be represented by counsel at the hearing, present witnesses and evidence in his defense and cross-examine witnesses. All witnesses shall testify under oath or affirmation. The Commission may issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material and take depositions as deemed necessary. The proceedings at the hearing shall be stenographically reported.
- E.** Findings and order by the Commission. Upon conclusion of the hearing, the Commission shall, not later than 30 days, serve a copy of its findings and order upon the licensee by certified mail. A licensee aggrieved by an order of the Commission may seek review of the order pursuant to the provisions of Title 12, Chapter 7, Article 6.
- A.** A candidate or licensee shall have 30 days from the date the Commission findings and order is served under R20-5-309 to request a hearing.
- B.** A request for hearing shall be in writing and signed by the candidate or licensee or the candidate's or licensee's legal representative. The candidate or licensee shall file the request for hearing with the Department.
- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Department within the time specified in subsection (A).

R20-5-312. Records Hearing Rights and Procedures

- A.** Accurate records. Each licensee shall keep true and correct records in the English language of the business transactions of his office.
All information entered on the foregoing records shall be legible and understandable and in accordance with generally accepted accounting procedure.
- B.** Bona fide job order
1. A licensee who charges an applicant a fee is required to complete a bona fide job order for each position on which he makes a referral. Such licensee shall maintain a record of his job orders for three years following the last action involved on that job order, which shall be recorded on a form containing the following:
 - a. Person communicating job order to the agency

- b. Date
- c. Name of the person recording the job order
- d. Name and address of employer and name of person to whom the applicant is to report for an interview
- e. Job title and basic requirements.

2. The licensee who charges an applicant a fee shall keep a record of all applicants referred to jobs and the date of referral either on the bona fide job order or other suitable record.

- C.** False entries. A licensee shall not make any false entries in the record required by the Commission to be kept as herein provided.

A. Burden of proof.

1. Except as provided in subsection (A)(2) and R20-5-324, in all proceedings arising out of Title 23, Chapter 3, Article 2, the candidate or licensee shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-521 et seq. and this Article.
2. In revocation and suspension hearings, the Commission shall have the burden of proof to establish that the licensee committed the acts described in A.R.S. § 23-529(A).

B. Roles of Chair and Chief Counsel.

1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission. Upon direction of the Chair of the Commission and on behalf of the Commission, the Chief Counsel shall issue all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Department.

C. Appearance by a party.

1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.

D. Filing and service.

1. For purposes of this Section, a document is deemed filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
2. Except as otherwise provided in A.R.S. § 23-521, et seq. and this Article, service of all documents upon the Commission, candidate, licensee or applicant shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.

E. Notice of hearing.

1. The Commission shall give the parties at least 20 days notice of hearing.
2. A notice of hearing shall be in writing and mailed to the address of the candidate or licensee as shown on the application for employment agent license or upon the

candidate's or licensee's representative if a notice of appearance has been filed by the representative. In the case of a fee dispute hearing, a notice of hearing shall be mailed to the address of the applicant as shown on the complaint and the licensee as shown on the answer, if an answer is filed. If no answer is filed, then the notice of hearing shall be sent to the last known mailing address of the licensee as shown on the records of the Commission.

3. A notice of hearing shall comply with the requirements in A.R.S. §41-1061(B).

F. Evidence.

1. The civil rules of evidence do not apply to hearings held under this Section.
2. The parties may make opening and closing statements with the permission of the Commission if the statements will be helpful to a determination of the issues.
3. All witnesses at a hearing shall testify under oath or affirmation.
4. The parties may present evidence and conduct cross-examination of witnesses.
5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.

- G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

R20-5-313. Renumbered Decision Upon Hearing by Commission

- A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-309(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B. A decision of the Commission to revoke or suspend a license shall be based upon the grounds in A.R.S. § 23-529 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C. A decision of the Commission under R20-5-322(D) shall be based upon the grounds in R20-5-322(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D. Within 30 days after the Commission renders a decision at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.

- E. A Commission decision is final unless a candidate or licensee requests review under R20-5-314 within 30 days from the date the written decision is issued.

R20-5-314. Job Orders Request for Review

- A. Bona fide job order required. No employment agent shall offer or hold himself out as in a position to secure a specific position without having a bona fide job order or misrepresent any other material matter in connection with any employment, work or situation he offers or holds himself out in a position to secure. This rule shall not apply to institutional advertising.
- B. Unauthorized applicant solicitation. No employment agent shall offer or hold himself out as in a position to secure or furnish employment for an applicant or prospective applicant by initially contacting him/her in any way at the applicant's employer.
- A. A party may request review of a Commission decision issued under R20-5-313 by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties.
- B. A request for review shall be based upon 1 or more of the following grounds which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion depriving the party seeking review of a fair hearing;
 2. sion, or any party to the hearing;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 5. Excessive or insufficient sanctions or penalties imposed at hearing;
 6. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 7. Bias or prejudice of the Department, Council, or Commission; or
 8. That the order, decision, or findings of fact are not justified by the evidence or are contrary to law.

- C. A request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E. The Commission's decision upon review is final unless a candidate or licensee seeks judicial review as provided in A.R.S. §12-901 et seq.

R20-5-315. Labor Contractors Procedure for Investigation and Disposition of Complaints Filed Under A.R.S. § 23-529

- A. "Labor contractor" means any person, who, for a fee or other compensation, employs an individual to render personal services to, for or under the direction of a third person.
- B. Labor contractors employing individuals to render part-time or temporary personal services to, for or under the direction of social security taxes, state and federal unemployment insurance, carry workmen's compensation insurance as required by state law, and sustain responsibility for the acts of their employees while rendering services to, for or under the direction of a third person shall not be considered as employment agents.
- A. A complaint described in A.R.S. § 23-529 shall be filed with the Department within 90 days of the date on which the event giving rise to the complaint occurred.

- B.** Upon receipt of a complaint, the Department shall conduct a thorough investigation of the facts relative to the alleged misconduct including obtaining a response from the licensee that is the subject of the complaint. If, upon completion of its investigation, the Department determines that there is sufficient evidence to warrant a revocation or suspension hearing, the Department shall present its findings to the Commission. If the Commission agrees with the Department that there is sufficient evidence to warrant a revocation or suspension hearing, the Commission shall direct the secretary of the Commission to serve the subject licensee with a verified complaint under A.R.S. § 23-529. In addition to the requirements set forth in A.R.S. § 23-529, the verified complaint shall contain the factual findings of the Department and a statement that the Commission shall consider the failure of the licensee to appear at hearing to be an admission of the factual findings in the verified complaint.
- C.** Except as provided in A.R.S. § 23-529, R20-5-312, R20-5-313, and R20-5-314 govern hearing rights and procedures for revocation and suspension hearings.

R20-5-316. Talent and Modeling Agencies-Reissuance of Employment Agent License After Suspension under A.R.S. § 23-529(D)

A. Definitions

1. A "talent and modeling agency" means a person, firm, corporation, or association which, for a fee, commission or charge, engages in the occupation of procuring, offering, promising, or attempting to provide engagements for artists or models.
2. "Artist" means a person rendering professional service in motion picture, theatrical, radio, television and other entertainment enterprises.
3. "Engagement" means any engagement or employment of a person as an actor, entertainer or model, or performer in a circus, vaudeville, theatrical, or other entertainment, exhibition, or performances.
4. "Emergency engagement" means an engagement which has to be performed within 48 hours from the time when the contract is made.
5. "Business manager" means a person, firm, or corporation whose services to an artist are limited to the giving of financial advice or management of financial affairs.
6. "Personal manager" is a person, firm, or corporation whose services are limited to counseling and advising an artist in and in connection with his professional career as an actor.

- B.** No person, firm, corporation or association shall conduct in the state of Arizona the business of a talent and/or modeling agent without obtaining an employment agency license. The following activities shall not be considered as conducting the business of a talent agent in this state:

1. The production of theatrical or musical arts or stage shows consisting of responsibility for an entire program;
2. Interstate activities, placement and bookings;
3. Acting as exclusive business or personal manager for an artist;
4. Casting services.

- C.** The rules and regulations governing private employment agencies shall apply to talent and modeling agencies.

- D.** A talent and modeling agency shall investigate any employer who is offering employment to an artist or model to reasonably assure that such employer has not defaulted in the payment of salaries, fees or other compensation to artists and models he has employed.

- E.** A talent and modeling agency shall execute with each artist or model a contract which includes the name and address of the applicant; the name and address of the employer; the time and duration of such engagement; the amount to be paid to such applicant; the character of entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given by said applicant. Such contracts or statements shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. Forms of such contracts shall be approved by the Department. The artist or model shall receive a copy of such contract.

- F.** The terms of contracts entered into by a talent agency and an artist shall not exceed two years. Such contracts, however, may be renewed and may be terminated by mutual consent of the parties to the contract.

- G.** No contract of a talent agency for agency services rendered or to be rendered an artist may specify a higher rate of commission than that which is on file with the Department. Such commissions shall be payable for the period specified in the agency contract only if and when the artist receives compensation on which such commissions are payable.

- H.** Every talent agency shall keep records in which shall be entered:

1. The name and address of each artist or model employed such agency;
 2. The amount of fee received from such artist or model;
 3. Each employment secured by such artist or model during the term of the contract with the agency and the amount of compensation received by the artist or model. No talent agency, its agent or employees shall make any false entry in any such records.
- All books, records and other papers kept by any talent and modeling agency shall be open at all reasonable hours to the inspection of the Department. Every talent and modeling agency shall furnish to the Department upon request a true copy of such books, records, and papers of any portion thereof and shall make such reports as the Department prescribes.

- A.** An employment agent, whose license has been suspended, may file a request with the Commission after the Commission's decision suspending the license is deemed final asking that the license be reissued. The request for reissuance shall be filed with the Department and shall include the following:

1. The grounds and facts supporting the request for reissuance;
2. All action taken by the formerly licensed employment agent to correct, remedy, or address the reason that the Commission suspended the license; and
3. All information required in an initial application, unless unchanged, in which case a verified statement that the information required for an initial employment agent license is true and correct as originally submitted.

- B.** The Department shall review the request for reissuance of employment agent license for administrative completeness within 15 days of receipt of the request.

- C.** Within 60 days after the expiration of the time-frame described in subsection (B), the Commission shall conduct a hearing to determine whether the previously suspended license should be reissued. The Commission shall reissue the suspended license if it appears by substantial evidence that the licensee has corrected or remedied the reason that the Commission suspended the license and the licensee has not engaged in any acts in violation of Title 23, Chapter 3, Arti-

cle 2 or this Article during the time that the license was suspended.

- D.** R20-5-312, R20-5-313 and R20-5-314 govern hearing rights and procedure for this Section.

**R20-5-317. Employment Agencies Acting without a License
Amendment of Employment Agent License**

- A.** The Department shall investigate the nature and scope of the business of any person, firm, corporation or association when such business appears to be within the scope of the definition of an "employment agent" contained in A.R.S. § 23-521.
- B.** Such investigation may include, but not be limited to, written reports from the person, firm, corporation and association; inspection of records; and depositions from witnesses.
- C.** If, after thorough investigation by the Department, it is determined that such person, firm, corporation and association is conducting the business of an employment agent in the state of Arizona without a license, the Department shall forthwith submit the entire record of its investigation, along with the Department's findings, to the appropriate law enforcement agency for criminal prosecution in accordance with the provisions of A.R.S. § 23-536.
- A.** A licensee shall apply to the Department for an amendment to its employment agent license 30 days before:
1. Changing the name under which the employment agent license is issued; or
 2. Changing the location of the employment agency.
- B.** The Department shall review a request for amendment and shall issue an amended license 15 days after receipt of a licensee's current license and the following, if applicable:
1. If the licensee changes the name of the employment agency, the licensee shall submit an amendment or rider of the surety bond showing the new name; or
 2. If the licensee changes the licensee's trade name, the licensee shall submit a copy of the registration of the new trade name with the Arizona Secretary of State and submit an amendment or rider of the surety bond showing the new name.
- C.** Transfer or sale of license prohibited.
1. A licensee shall not transfer to another the licensee's employment agent license.
 2. A licensee shall not sell the licensee's employment agent license. A purchaser of a licensee's business shall not operate the applicant-paid fee business until the purchaser is licensed by the Commission under A.R.S. § 23-521 et seq. and this Article.
- D.** Before a licensee changes its legal status or form of doing business, the licensee shall file an initial application for an employment agent license for the new business.
- E.** Relinquishment of license.
1. A licensee shall give the Department 30 days written notice before terminating or discontinuing business as an employment agent.
 2. After receipt of a notice of intent to terminate or discontinue, the Department shall conduct an investigation of the licensee's operation to determine whether the operations are in order and in compliance with A.R.S. § 23-521 et seq. and this Article.
 3. If the Department determines that the licensee's operations are in order it shall notify the licensee and the company issuing the surety bond that the Department approves the discontinuance of the licensee's business and cancellation of the bond. If the licensee has made a cash deposit, the Department shall instruct the State Treasurer to return the cash deposit. After the Department notifies the licensee of its approval to discontinue

business, the licensee shall return its license to the Department for cancellation.

4. If, after an investigation of the licensee's operation, the Department determines that the licensee's operation is not in order (for example, pending claims, refund claims), the Department shall not approve the cancellation of the surety bond or return of the licensee's cash deposit until the licensee resolves all pending matters to the satisfaction of the Department.
- F.** Cancellation of the bond by the surety.
1. The Department shall provide written notice to a licensee within 5 days of a notice of cancellation of the bond by the surety. A licensee shall submit a new bond or cash deposit to the Department at least 10 days before the existing bond is canceled.
 2. If a licensee fails to provide to the Department a new bond or cash deposit within 10 days before the cancellation of the existing bond, the Department shall advise the licensee in writing that the licensee may not act as an employment agent from the date of the cancellation until the date a new bond or cash deposit is received by the Department.
 3. The repeated failure to maintain a surety bond or cash deposit at all times constitutes gross negligence and cause for disciplinary action under A.R.S. § 23-529.
- G.** Disassociation of managing agent.
1. A licensee shall notify the Department within 10 days if any managing agent is disassociated from a licensee.
 2. At the time of disassociation, a licensee shall appoint another managing agent unless an existing managing agent will be managing the employment agency without replacement of the disassociating managing agent.
 3. A newly appointed managing agent shall complete and file a supplemental application within 30 days of appointment.
 4. A newly appointed managing agent shall take and pass the written examination required by A.R.S. § 23-526 and R20-5-306.
 5. The Department shall advise a licensee whether an application filed by a newly appointed managing agent is deemed complete within 10 days from the date the application is filed. The Department shall issue findings and an order approving or disapproving the appointment of the newly appointed managing agent within 45 days of the date that the licensee is notified the application is complete. The Department shall disapprove the appointment of the new managing agent if the Department finds 1 or more of the following conditions:
 - a. Material misrepresentation or fraud in the newly appointed managing agent's supplemental application;
 - b. The newly appointed managing agent has a history or record of dishonesty;
 - c. The newly appointed managing agent has a history or record of financial instability or irregularity including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
 - d. The newly appointed managing agent has a history or record of incompetence;
 - e. The newly appointed managing agent has a history or record of gross negligence;
 - f. The newly appointed managing agent has a history or record of bribery;

- g. The newly appointed managing agent has a history or record of willful disregard of the requirements of Title 23, Chapter 3, Article 2;
 - h. The newly appointed managing agent has a history or record of injury or loss to the public; or
 - i. The newly appointed managing agent lacks the education, experience, training, or skill to enable the newly appointed managing agent to competently discharge the duties and responsibilities of a managing agent.
6. The Department shall deem its findings and order issued under subsection (G) final unless the licensee requests a hearing before the Commission within 30 days of the date that the findings and order is issued. The request for hearing shall be in writing, signed by the licensee or the licensee's legal representative and filed with the Commission. The Commission shall consider the factors in subsection (G) when approving or disapproving the appointment of a new managing agent. R20-5-312, R20-5-313, and R20-5-314 shall govern hearing rights and procedure for a request for hearing filed under this subsection.

R20-5-318. Effect of Rules and Regulations on Existing Licensees Form of Books, Registers and Records

- A. These rules shall apply from the time of their adoption to all licensees heretofore licensed by the Commission with the exception that said existing licensees will not be required to go through the procedures of obtaining a new license.
- B. A licensee whose employment agency changes its status as described in R20-5-305 after the adoption of these rules and regulations shall be required to comply with their provisions as regards the changes made in the agency's status.
- A. A licensee shall keep true and correct records of all the business transactions related to the business of an employment agency, including records documenting all bona fide job orders or referrals and copies of all advertisements of the licensee. The licensee shall ensure that all records are legible, understandable and maintained in the office of the licensee for at least 3 years.
- B. In addition to the requirements of subsection (A), a licensee shall maintain a summary record of the licensee's job orders and referrals for the prior 3 years which is recorded on a form containing the following:
 - 1. Name of the individual communicating the job order;
 - 2. Name of the individual communicating the job referral;
 - 3. Date of the job order and the job referral;
 - 4. Name of the individual recording the job order and job referral;
 - 5. Name and address of employer or company placing the job order;
 - 6. Name of individual to whom the applicant is to report for an interview;
 - 7. Job title and basic requirements of the job contained in job order and referral; and
 - 8. Name of applicant referred.

R20-5-319. Form and Requirements of Contracts

- A. Contract terms and provisions. A licensee shall ensure that all contracts between a licensee and applicant set forth in clear and unambiguous terms the respective rights and obligations of the applicant and licensee and include the following:
 - 1. The name and address of the applicant and licensee;
 - 2. A list of the current schedule of fees and charges described in A.R.S. § 23-530(A) and submitted to the Commission;

- 3. A clear statement defining when the applicant becomes obligated for the payment of a fee;
- 4. A clear statement describing the circumstances under which the applicant is entitled to an adjustment, waiver, or refund of a fee;
- 5. A clear statement describing the services performed by the licensee, including if applicable, the duration of the contract;
- 6. A statement that the employment agency is licensed, bonded, operates under the laws of Arizona, and is regulated by the Industrial Commission of Arizona;
- 7. An acknowledgment by the applicant that the applicant has received a copy of the signed contract; and
- 8. Except for contracts between an applicant and a talent or modeling agent, a statement that employment is considered to be temporary when within 90 days after employment begins the employment is terminated through "no fault" of the applicant, or the applicant voluntarily terminates the employment with "just cause".
- 9. The following statement shall be included in all contracts between an applicant and career counseling service in no smaller than 10 point bold face type: 'No verbal or written promise or guarantee of any job or employment is made or implied under the terms of the contract'.

- B. An applicant is deemed to have accepted a position when the applicant agrees with an employer or company to start work at an agreed-upon wage.
- C. Except for contracts between an applicant and a talent or modeling agent, all placements are considered permanent unless the contract expressly states otherwise or within 90 days after employment begins the employment is terminated through "no fault" of the applicant, or the applicant voluntarily terminates the employment with "just cause".
- D. A licensee shall provide the applicant a copy or duplicate original of all documents signed by either or both the applicant and licensee.
- E. The duration and terms of a contract entered into by a talent or modeling agent and applicant shall not exceed 2 years. A contract may be renewed or terminated by mutual consent of the parties.
- F. If a term of a contract entered into by a talent or modeling agent, or applicant provides that the applicant's compensation is paid directly to the talent or modeling agent by a company, the talent or modeling agent shall pay the applicant the compensation received, less the talent or modeling agent's fee, no later than 7 days after receiving the compensation from the company.
- G. A talent or modeling agent shall not specify in a contract with an applicant a higher rate of commission than that which is on file with the Department.

R20-5-320. Bona Fide Job Order

- A. A licensee shall not offer or represent to an applicant a specific position without having a bona fide job order.
- B. A licensee shall not misrepresent any matter in connection with a bona fide job order.
- C. A licensee shall not initiate contact with any applicant at the applicant's current place or places of employment for any reason related to the licensee's employment agency business without the applicant's written permission.

R20-5-321. Bona Fide Job Referral

- A. A referral from a licensee, other than a talent or modeling agent, is bona fide when all of the following are completed:

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1. The licensee informs the applicant of the name and location of an employer that has placed a bona fide job order, including the name of the individual to whom the applicant will report for an interview;
 2. The licensee informs the applicant of the job specifications and salary range, including the nature, terms, and conditions of the position;
 3. The licensee informs the employer of the applicant's name and qualifications; and
 4. The employer and applicant agree, either directly or by authorized arrangement of the licensee, to meet for an interview.
- B.** A referral from a talent or modeling agent is bona fide when all of the following are completed:
1. The talent or modeling agent informs the applicant of the name and location of a company that has placed a bona fide job order;
 2. The talent or modeling agent informs the applicant of the time and duration of the contracted engagement and the amount to be paid to the applicant for the engagement; and
 3. The talent or modeling agent gives the applicant a description of the entertainment or services to be performed by the applicant, including the nature, terms, and conditions of the position, and if applicable, the number of performances per day or week required of the applicant.

R20-5-322. Submission and Approval of Fee Schedule and Receipts by Commission

- A.** The Department shall not approve a fee schedule or receipt submitted by a candidate or licensee unless the schedule or receipt is in a form that is reasonably understandable by applicants.
- B.** The Department shall consider the following factors in determining the reasonableness of a fee under A.R.S. § 23-530(B):
1. The fee customarily charged in the locality for similar employment services;
 2. The time and labor required of the candidate or licensee;
 3. The skill required to perform the employment services properly; and
 4. The experience, reputation, and ability of the candidate or licensee performing the employment services.
- C.** A licensee may change its schedule of fees by filing an amended schedule of fees with the Department. The licensee shall not use the amended schedule of fees until the schedule has been approved by the Department.
- D.** Except as provided in R20-5-308, the Department shall review a licensee's amended schedule of fees within 30 days from the date of filing and shall issue a written order approving or disapproving the schedule of fees. The Commission shall deem an order approving or disapproving the schedule of fees final unless a licensee requests a hearing within 30 days after the order is issued. R20-5-312, R20-5-313, and R20-5-314 shall govern hearings held under this subsection.

R20-5-323. Fees for Services

- A.** Under A.R.S. § 23-530 and subject to subsection (D), a licensee, other than a talent or modeling agent or career counselor, may charge an applicant a fee when any of the following occur:
1. The applicant accepts employment as a result of a bona fide job order;
 2. The applicant accepts employment as a result of a bona fide job order and fails to report for work, except when justifiable circumstances prevent the applicant from

reporting to work. For purposes of this Section 'justifiable circumstances' include death of an applicant or family member, serious physical or psychological illness or condition of an applicant or family member or 'just cause' as defined in R20-5-323(F);

3. The applicant fails to secure or does not accept a position to which the applicant was originally referred but accepts another position with that employer or with any employer to whom the 1st employer refers the applicant within 6 months as a result of the original referral by the licensee; and
 4. The applicant informs another person of the availability of the position described in the referral by the licensee and that person accepts the position within 6 months after the date of the referral.
- B.** Under A.R.S. § 23-530 and subject to subsection (D), a talent or modeling agent may charge an applicant a fee when the applicant receives compensation from the company to whom the applicant is sent under a bona fide referral.
- C.** Under A.R.S. § 23-530 and subject to subsection (D), a career counselor may either charge an applicant a fee after the applicant receives services from the career counselor, or require payment in advance of services, if the career counselor provides a prompt refund to the applicant when services are not provided.
- D.** Computation of a fee by a licensee other than a talent or modeling agent or career counselor.
1. A licensee shall not charge a full fee but may charge an adjusted fee to an applicant who starts work but before the expiration of 90 days stops work for the following reasons:
 - a. The applicant or family member dies.
 - b. The applicant or family member suffers a serious physical or psychological illness or condition.
 - c. The applicant is discharged 'without fault', or
 - d. The applicant resigns with 'just cause'.
 2. A licensee shall not charge more than 50% of the scheduled fee to an applicant who fails to report to work without good reason or voluntarily terminates employment without just cause within 30 days of starting employment.
- E.** For purposes of computing a fee, termination "for cause" or "with fault" means a lawful or legal termination "for cause" or "with fault" under the laws of this State which may include termination for the following reasons:
1. Unexcused absence from work;
 2. Intentional violation of employer work rules; or
 3. Incapacitation or inability to perform work duties due to alcohol, drugs, or illegal substances or agents.
- F.** For purposes of computing a fee, an applicant has "just cause" for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld from the applicant and those conditions, if known, would cause the applicant to reasonably refuse employment.
- G.** Refund of a fee.
1. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if following a bona fide job order the applicant is not permitted to, or is unable to start work, as a result of justifiable circumstances as defined in R20-5-323(A)(2).
 2. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if the licensee fails to provide or deliver the services or products agreed upon in the contract between the licensee and applicant.

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R20-5-324. Fee Disputes

A. Complaint alleging refund dispute.

1. An applicant alleging that a licensee has failed to refund a fee that the applicant is entitled to receive may file a written notarized complaint with the Department. The written complaint shall be filed within 90 days of demanding a refund from the licensee. The applicant shall make the written complaint under oath and include the following information:
 - a. The name and address of the applicant;
 - b. The name and address of the licensee against whom the complaint is filed;
 - c. The factual allegations of the applicant along with any supporting documentation;
 - d. The relief requested by the applicant; and
 - e. All steps taken to informally resolve the dispute between the applicant and licensee.
2. The Department shall serve the licensee a copy of the complaint by certified mail within 5 days of receipt of the complaint.

B. Answer.

1. A licensee shall respond to a complaint filed against it by filing an answer with the Department within 10 days after the complaint is mailed.
2. The licensee shall attach to the licensee's answer copies of all receipts, agreements, or contracts relevant to the dispute.
3. The Department shall mail the applicant a copy of the licensee's answer within 10 days of receipt of the answer.

C. Investigation and determination by Department.

1. The Department shall investigate the allegations contained in a complaint and answer to determine whether a fee charged by the licensee complies with A.R.S. § 23-521 et seq. and this Article. At the request of the parties or on its own motion, the Department may schedule an informal meeting between the applicant, licensee and director of the Department. The Department shall convene the informal meeting for the purpose of obtaining information to assist the Department in its investigation of the refund dispute.
2. Within 90 days after receipt of the answer, or the complaint if no answer is filed, the Department shall issue written findings and an order setting forth its determination of the refund dispute.
3. The Department shall mail a copy of its findings and order upon the applicant and licensee by mail at the last known address of the applicant and licensee.
4. The Department shall deem its findings and order final unless within 30 days from the date the findings and order is mailed, the applicant or licensee, or an authorized representative of the applicant or licensee, requests a hearing before the Commission.

D. Commission Hearing and Decision.

1. Hearing rights and procedures shall be governed by R20-5-312.
2. An applicant shall have the burden to establish that the applicant is entitled to a refund.
3. Based on the evidence presented at hearing, the Commission shall determine whether the fee charged by the licensee complies with the requirements of A.R.S. § 23-521 et seq. and this Article entitling the applicant to a refund of the fee. The Commission shall issue written findings and an order setting forth its determination. The Commission decision is final unless a party requests

review within 30 days from the date the decision is issued.

4. A party may request review of a Commission decision issued under this subsection by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties. The request for review shall be based upon 1 or more of the grounds set forth in R20-5-314 (B) that have materially affected the rights of a party. The request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
5. The Commission shall deem its decision upon review final unless an applicant or licensee seeks review as required by A.R.S. § 23-532(C).

R20-5-325. Determining Right of Referral and Placement

As between 2 licensees, the licensee entitled to a fee is the licensee that first completes a bona fide referral. However, if after the expiration of 6 months from the date of a referral by a licensee to an employer, no active interest or consideration is being given the applicant by the employer through the original referral, and a 2nd licensee, who has a bona fide job order from the employer, refers the same applicant to the same employer and the applicant secures employment as a result of the 2nd referral, the 2nd licensee is entitled to the fee.

R20-5-326. Advertising

In addition to the provisions of A.R.S. § 23-534, the Department shall deem advertising false, misleading, or misrepresentative if the advertisement fails to conform to the following requirements:

1. An advertisement shall carry the name under which the agency is licensed to do business and shall state that the business is an applicant-paid service or includes an applicant-paid service. An agent may abbreviate in an advertisement "applicant-paid service" as "app-pd svc". An agent may abbreviate in an advertisement the name under which the agency is licensed to do business provided that an agent does not abbreviate its licensed name by using initials only unless initials are a part of the name under which the agent is licensed;
2. If an advertisement is for a specific position, it shall be based upon an actual bona fide job order with the licensee and available at the time the advertisement is printed;
3. An advertisement shall not use a post office box number, a press box number, an associate name, an employer or counselor name, a telephone number only, or any other "blind" address;
4. An advertisement shall be canceled when a position is known to be filled or when knowledge is available that the position is not available;
5. A position shall not be advertised at maximum pay only. A position may be advertised at a range from minimum to maximum, or by the words "to a maximum or \$" or "to \$". The word "open" or the symbol "\$\$\$" may not be used as a substitute for the salary of any position or positions in an advertisement;
6. An advertised position that requires or may require travel 50 miles beyond the city in which the newspaper or medium is published shall state that the position is not local;
7. A job title shall appear in an advertisement and shall be reasonably descriptive in accordance with the type of work to be performed;
8. An advertisement for a position within the agency itself shall indicate the agency is the employer;

9. An advertisement shall not state "guarantees a job", "guaranteed results," or words of similar import;
10. If the advertisement is a display or promotional advertisement and does not list a particular position, it shall carry the licensed name of the licensed employment agency;
11. An advertisement shall not state or imply that the licensed employment agency has access to an 'an unpublished job market' or 'hidden job market'; and
12. An advertisement for a career counseling service shall not state or imply the following:
 - a. The existence of specific or general job openings;
 - b. Special contacts;
 - c. The success performance of clients in percentage terms;
 - d. Prospective increase in income as a result of utilizing the career counseling service;
 - e. The number of interviews or job offers likely to be obtained as a result of utilizing the career counseling service; and
 - f. The time within which it is likely that a new position will be found.

R20-5-327. Labor Contractors

A labor contractor is not considered a private employment agent provided the labor contractor does not charge a fee to the worker who is contracted to the labor contractor's customer or client and meets the definition of a labor contractor under this Article.

R20-5-328. Talent and Modeling Agencies

A. All talent or modeling agencies meeting the definition of an employment agent in A.R.S. § 23-521(A) are subject to the provisions of A.R.S. § 23-521 et seq. and this Article, except that the Department shall not consider the following activities

as conducting the business of a talent agent in this state if no fees are charged to applicants for:

1. The production of theatrical or musical arts or stage shows consisting of responsibility for an entire program;
 2. Acting as exclusive business or personal manager for a talent and not referring talent and models to jobs; or
 3. Casting services.
- B. A talent or modeling agency shall investigate any company who offers employment to a talent or model to reasonably ensure that the company has not defaulted in the payment of salaries, fees, or other compensation to talents and models the company has employed.

R20-5-329. Employment Agencies Acting Without a License

- A. The Department shall investigate the nature and scope of the business of any person, firm, corporation, or association when the person, firm, corporation, or association appears to meet the definition of an "employment agent" in A.R.S. § 23-521, but is operating without an employment agent license.
- B. The Department's investigation may include requesting written reports from the person, firm, corporation, or association in question, inspecting relevant records, and securing statements or depositions from witnesses.
- C. If, after a thorough investigation, the Department determines that the person, firm, corporation, or association is conducting the business of an employment agent in Arizona without an employment agent license, the Department shall submit the entire record of its investigation, along with the Department's findings, to the appropriate law enforcement agency for criminal prosecution in accordance with the provisions of A.R.S. § 23-536.